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HCP.No.1885 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1885 of 2024

Chandira

... Petitioner/
Mother of the detenue

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.
2. Commissioner of Police,
Avadi City,
Chennai - 600 054.
3. The Superintendent of Prison,
Central Prison - I, Puzhal,
Chennai - 600 066.
4. The Inspector of Police,
E-3, Minjur Police Station,
Minjur,
Thiruvallur District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents to produce the body and person of the detenue Mr.Ajith @ Avuja, aged 24 years, S/o.



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Elumalai, who is detained in Central Prison I, Puzhal, Chennai, before this Court and pass an order to call for the records of detention order passed by the second respondent in No.67/BCDFGISSSV/2024 dated 11.06.2024 against petitioner's son Mr.Ajith @ Avuja, S/o. Elumalai and set aside the same and set the detenue at liberty.

For Petitioner : Mr.R.Rafi Babu
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The preventive detention order passed by the second respondent dated 11.06.2024 is sought to be quashed in the present habeas corpus petition.

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 28.04.2024 and



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thereafter, the detention order came to be passed on 11.06.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. The detainee has filed a sworn affidavit before this Court. Para. 3 and 4 of the affidavit reads as under:

"3.I am a law abiding citizen and I always abide by the law, I further I undertake that once I am unconfined from the present incarceration, I will not in any manner get myself involved in any strained situation nor create any disturbance to the public. I further undertake that, I will amend my behaviors, will act in a dignified manner and will maintain a good conduct in the society. I further promise that I will lead a life as a responsible person and I am committed to making positive changes. I want to be a better person for myself, for my family and to the society.

4.I like to acquire new skills and want to contribute positively to society upon my release. I want to reintegrate into society as a better, responsible and law-abiding citizen. This includes seeking employment, maintaining healthy relationships, and contributing positively. I promise that over time, my actions will demonstrate my sincerity in keeping up the above promises."

6. In the case of '**Sushanta Kumar Banik Vs. State of Tripura**', reported in '**2022 LiveLaw (SC) 813**', when there was an inordinate delay



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from the date of proposal till passing of the detention order and likewise, between the date of detention order and the actual arrest, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped in arresting the detenu. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:-

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

7. Drawing inspiration from the judgment in ***Sushanta Kumar***



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Banik's case, a co-ordinate Bench of this Court in the case of '***Gomathi Vs.***

Principal Secretary to Government and Others', reported in '***2023 SCC OnLine Mad 6332***', had held that when there is an inordinate delay from the date of arrest/date of proposal till the order of detention, the live and proximate link between them would also stand snapped and thereby, had quashed the detention order on this ground.

8. In yet another case i.e., in '***Nagaraj Vs. State of Tamil Nadu***', reported in '***(2018) 3 MWN (Cri) 428***', this Court had held that the delay of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Hence, in view of the unexplained and inordinate delay in passing the order of detention, after the arrest of the detenu, the detention order in the present case, is liable to be quashed.

9. Accordingly, the detention order passed by the second respondent in proceedings No.67/BCDFGISSSV/2024 dated 11.06.2024 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz.,



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Ajith @ Avuja, S/o.Elumalai, aged 24 years confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.] [V.S.G., J.]
03.09.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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4. The Inspector of Police,
E-3, Minjur Police Station,
Minjur,
Thiruvallur District.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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