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HCP.No.2210 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM :

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

H.C.P.No.2210 of 2024

V.Kalyani

... Petitioner

Vs.

1.State of Tamil Nadu Represented by
The Principal Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai – 600 007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
AWPS Valasaravakkam Police Station,
Valasaravakkam,
Chennai – 600 087.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India To issue a writ, order or direction or any other writ in the nature of Habeas Corpus petition calling for the records relating to the impugned order of detention dated 05.07.2024 in 761/BCDFGISSSV/2024 passed by the 2nd respondent herein and quash the same and consequently direct the respondents to produce the detenu Murugan @ Murugesan, S/o.Velsamy, now confined in Central Prison, Puzhal, before this hon'ble Court and set him at liberty.

For Petitioner : M/s.K.Prasanthan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The order of detention passed by the 2nd respondent in proceedings No.761/BCDFGISSSV/2024 dated 05.07.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. There is a delay in passing detention order, more so, there is only one adverse case has been relied on for the purpose of issuing the impugned order of detention.



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

4. The learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention.

5. In the instant case, the detenu was arrested on 30.05.2024 and thereafter, the detention order came to be passed on 05.07.2024. This fact is not disputed by the learned Additional Public Prosecutor.

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



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“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 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.



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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 No.761/BCDFGISSSV/2024 dated 05.07.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Murugan @ Murugesan, S/o.Velsamy, aged about 27 years, now confined in 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.]

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Index: Yes/No

Internet: Yes/No



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Neutral Citation: Yes/No

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