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HCP.No.2059 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS. JUSTICE N.MALA

H.C.P.No.2059 of 2024

R. Loganathan

... Petitioner/Father of the
detenue

Vs.

1. State rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The District Collector Cum District Magistrate,
Vellore District, Vellore – 9.
3. The Superintendent of Prison,
Central Prison, Salem.
4. The Superintendent of Police,
Vellore District, Vellore.
5. The Inspector of Police,
PEW-Vellore Police Station,
Vellore District.

... Respondents



HCP.No.2059 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, call for the records of the second respondent herein in his proceedings No. C3/D.O.No. 67/2024 dated 01.08.2024 and set aside the same and consequently direct the respondents herein to produce the detainee Vijay son of Loganathan aged 23 years, now confined in Central Prison, Salem before the Court and set at liberty.

For Petitioner : Mr.S.Prabhu
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 01.08.2024 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. The learned Counsel appearing on behalf of the petitioner would mainly contend that there was a delay in considering the representation submitted by the detainee under Act 14 of 1982.



HCP.No.2059 of 2024

4. Delay in considering the representation is vital, more specifically in preventive detention cases. The detention power conferred under Act is extremely powerful and that have the ability to confer arbitrary power to the State. In such circumstances, where there is a possibility of an unfettered discretion of power by the Government, the Court must analyse cases arising from such laws with extreme caution and excruciate detail power to ensure that there are check, and balances on the power of the Government. Every procedural rigidity must be followed in entirety by the Government in cases of preventive detention and every lapse in procedure must give raise to benefit to the cases of detainee. The Courts in such circumstances of preventive detention, are conferred with a duty that has been given the utmost importance by the Constitution of India, which is the protection of individual and civil liberties. Therefore, the adherence of the procedures and the Rules and the opportunities to be afforded to the detainee are of paramount importance and a constitutional mandate. Therefore, every lapse in exercising the power identified are to be viewed seriously.



HCP.No.2059 of 2024

5. High Court in exercise of powers of Judicial Review under Article 226 in the case of habeas corpus is not expected to assess the nature of the seriousness of the criminal cases registered and pending against the detainee. The cases of preventive detention are to be dealt with in accordance with the personal liberty of the detainee granted under Part-III of the constitution. Therefore, the dealing of preventive detention cases are not comparable with reference to the regular criminal cases. The cases under preventive detention stands in different footing than that of the regular criminal cases wherein the procedures are distinct and different. Thus, High Court is expected to exercise its powers meticulously to scrutinise, whether there is any lapses on the part of the detaining Authority and the power has been exercised judiciously by scrupulously following the procedures and application of mind has been made as required under law and the breach of public order likely to be caused by the detainee. It is held that mere law and order cannot be a ground to detain a person. The likelihood of causing disturbance to public order, which must be the subjective satisfaction of the detaining Authority while passing the order of detention.



HCP.No.2059 of 2024

6. Admittedly, in the present case, there is a delay of nine (09) days in considering the representation and that is not disputed by the learned Additional Public Prosecutor. The delay in considering the representation undoubtedly caused infringement of the right of personal liberty of the detenu under Article 21 of the constitution of India. Thus, the order of detention do not stand under the scrutiny of law.

7. Further, the learned Counsel for the petitioner would submit that there is an inordinate delay in passing the order of detention.

8. In the instant case, the detenu was arrested on 18.06.2024 and thereafter, the detention order came to be passed on 01.08.2024. This fact is not disputed by the learned Additional Public Prosecutor.

9. 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



HCP.No.2059 of 2024

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.”

10. 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



HCP.No.2059 of 2024

quashed the detention order on this ground.

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11. 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.

12. For the aforesaid reasons, the impugned order of detention on the file of the second respondent in proceedings C3/D.O.No.67 of 2024 dated 01.08.2024 is quashed and the habeas corpus petition stands **allowed**. The detenu viz., Vijay, S/o. Loganathan, aged 23 years, confined at Central Prison, Salem is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.] [N.M., J.]
18.09.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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HCP.No.2059 of 2024

WEB COPY

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The District Collector Cum District Magistrate,
Vellore District, Vellore – 9.
4. The Superintendent of Prison,
Central Prison, Salem.
5. The Superintendent of Police,
Vellore District, Vellore.
6. The Inspector of Police,
PEW-Vellore Police Station,
Vellore District.
7. The Public Prosecutor,
Madras High Court,
Chennai - 104.



WEB COPY



HCP.No.2059 of 2024

S.M.SUBRAMANIAM, J.
AND
N.MALA., J.

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H.C.P.No.2059 of 2024

18.09.2024