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H.C.P.No.1653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1653 of 2023

Radha

... Petitioner

Vs.

1. State of Tamil Nadu
Represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Villupuram District, Villupuram.
3. The Superintendent of Police,
CBCID, Villupuram, Villupuram District.
4. The Superintendent
Central Prison, Cuddalore.
5. The Inspector of Police
Marakkanam Police Station
Villupuram District.

... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent dated 09.07.2023 in RC. No.C2/45975/2023 against the petitioner's husband/detenu Elumalai, S/o.Ramachandran, Hindu, aged about 50 years who is now confined at Central Prison, Cuddalore, and set aside the same and direct the respondents to produce him before this Hon'ble Court and set him at liberty.

For petitioner : Mr.R. Bhuvanesh Kumar
for Mr.M.Devaraj

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The Petitioner, wife of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against her husband, in Rc.No.C2/45975/2023 dated 09.07.2023, branding the detenu as a "GOONDA" contemplated under Section 2(f) of Tamil Nadu Act 14 of



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2. Heard the learned counsel for the petitioner and 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 a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 17.05.2023 and the detention order was passed on 09.07.2023. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court in HCP No.1388 of 2022 [**Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332**], held as follows:

"6.... As between 08.04.2022 and 18.06.2022, it is well over two months and given the facts and circumstances of the



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instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped."

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in ***Sushanta Kumar Banik v. State of Tripura***, reported in ***2022 LiveLaw (SC) 813***, though in that case, the Hon'ble Supreme Court did not directly deal with the issue of delay in passing the detention order after the arrest of the detenu. The relevant observations of the Hon'ble Supreme Court are 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



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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."

5. In yet another case i.e., in ***Nagaraj v. State of Tamil Nadu***, reported in **(2018) 3 MWN (Cri) 428**, this Court 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.

6. Therefore, though, we are of the view that in view of the unexplained delay in passing the order of detention after the arrest of the detenu, the detention order is liable to be quashed, we have also taken into consideration the sensitivity of the case involved and the objections of the learned Additional Public Prosecutor that there may be some law and order problem from the families of the victims in Villupuram District.



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WEB COPY 7. In this background, to secure the ends of justice, this Habeas Corpus Petition is allowed on the following conditions.

(i) The detention order passed by the 2nd respondent dated 09.07.2023 in Rc.No.C2/45975/2023, is set aside.

(ii) The detenu viz., Elumalai, aged 50 years, S/o.Ramachandran, now confined in Central Prison, Cuddalore, is directed to be set at liberty forthwith unless he is required in connection with any other case.

(iii) The detenu is directed to stay within the revenue district of Cuddalore and report before the Inspector of Police, CBCID Office, New Town Police Station Campus, Cuddalore, daily at 10.30am, until further orders.

**[M.S.R., J] [S.M., J]
19.02.2024**

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Index : Yes / No

Neutral Citation : Yes / No



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To

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- 1 The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Villupuram District, Villupuram.
3. The Superintendent of Police,
CBCID, Villupuram, Villupuram District.
4. The Superintendent
Central Prison, Cuddalore.
5. The Inspector of Police
Marakkanam Police Station
Villupuram District.
6. The Public Prosecutor
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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