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H.C.P.No.1755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1755 of 2023

Dhanalakshmi

... Petitioner/Mother of Detenu

Vs.

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai – 600 009.

2. The District Collector & District Magistrate,
Chengalpattu District,
Chengalpattu.

3. The Superintendent of Police,
Chengalpattu District.

4. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

5. The Inspector of Police,
G6-Chithamur Police Station,
Chengalpattu District.

... Respondents



H.C.P.No.1755 of 2023

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order in CPT.49/2023 dated 14.08.2023 on the file of the 2nd respondent and Quash the Same and direct the respondent to produce the corpus of the detention namely Naresh Kumar S/o.Dhakshinamurthy, aged about 32 years now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

ORDER

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

The petitioner, mother of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.08.2023 slapped on her son, branding him as "Bootlegger" under the Tamil Nadu Act 14 of 1982.

2. Heard the learned counsel for the petitioner and the learned



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Additional Public Prosecutor appearing for the respondents.

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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 16.05.2023 and the detention order was passed on 14.08.2023. 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 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 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



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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 Chengalpattu District.

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 14.08.2023 in CPT No.49/2023, is set aside.

(ii) The detenu viz., Naresh Kumar, aged 32 years, S/o.Dhakshinamurthy, now confined in Central Prison, Puzhal, Chennai, 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 Kancheepuram and report before the Inspector of Police, CBCID, Kancheepuram, No.6, Ellappanagar, First Street, Kancheepuram, daily at 10.30am, until further orders.

[M.S.R., J] [S.M., J]
22.01.2024

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Index : Yes / No

Neutral Citation : Yes / No



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To

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Home, Prohibition & Excise Department,
Secretariat, Chennai – 600 009.
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