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HCP.No.2198 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

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

H.C.P.No.2198 of 2024

Gopika

... Petitioner

Vs.

1.The Secretary to Government,
Home, prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.

3.The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.

4.State rep. By its
The Inspector of Police,
PEW – Coimbatore City,
Coimbatore District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, call for the entire records relating to the petitioners husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 20.08.2024 on the file of the second respondent herein made in proceedings Memo C.No.101/G/IS/2024, quash the same as illegal and consequently direct the respondents herein to produce the petitioners husband U.Sitheswaran, S/o.Uthamaraj, aged 23 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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 Memo C.No.101/G/IS/2024 dated 20.08.2024 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.



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3. The learned counsel for the petitioner would submit that the detenu was arrested on 24.07.2024 and the impugned Detention Order has been issued on 20.08.2024. Therefore, there is a delay in passing the detention order.

4. Though the detaining authority relied on the ground case while passing the detention order, we find that the ground case would be insufficient to form an opinion that there is likelihood of causing breach of public order warranting invocation of Act 14 of 1982.

5. In the case of *Sushanta Kumar Banik vs. State of Tripura*¹, 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:

“**20.** It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying

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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.”

6. Hence, mere subjective satisfaction would be insufficient to invoke preventive detention law. Such subjective satisfaction must have nexus, link and proximity relating to the adverse cases relied on. More so, the offences can be dealt with by the prosecution under the law of the land and the detention order seems to be not in consonance with the principles settled.

7. In view of the fact that the ground case alone would be



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insufficient to form an opinion that there is a likelihood of breach of public order, we are inclined to interfere.

8. Therefore, the detention order passed by the second respondent in Memo C.No.101/G/IS/2024 dated 20.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., V U.Sitheswaran, S/o.Uthamaraj, aged 23 years, now confined in Central Prison, Coimbatore 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.]

30.09.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

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Chennai – 600 009.
- 2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
- 3.The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.
- 4.The Inspector of Police,
PEW – Coimbatore City,
Coimbatore District.
- 5.The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
- 6.The Public Prosecutor,
Madras High Court.



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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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