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H.C.P.No.2246 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2246 of 2024

Mary

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
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 of Prison,
Central Prison,
Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
J-7 Velachery Police Station,
Adyar District.

... Respondents



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Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for the entire records relating to the Impugned Order of Detention passed by the second respondent in No.848/BCDFGISSSV/2024 dated 13.08.2024 and set aside the same and consequently direct the respondents to produce the detenu Surya, son of Mathiyazhagan, aged about 25 years, Petitioner's son now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Thompson

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

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The present habeas corpus petition filed challenging the detention order passed by the 2nd respondent in No.848/BCDFGISSSV/2024 dated 13.08.2024.

2. The learned counsel for the petitioner would submit that the detenu was arrested on 18.07.2024 and the impugned Detention Order has been



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issued on 13.08.2024. Therefore, there is a delay in passing the detention order.

3. Though the Learned Additional Public Prosecutor would submit that 8 previous cases are pending against the detenu, we found that those cases were registered long before and have no proximity with reference to the ground case relied on invoking Act 14 of 1982.

4. 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 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

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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. 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.

6. In view of the fact that the ground case alone would be insufficient to form an opinion that there is a likelihood of breach of public order, we are inclined to interfere.

7. Accordingly, the detention order passed by the 2nd respondent in



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No.848/BCDFGISSSV/2024 dated 13.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Surya, S/o. Mathiyazhagan, aged 25 years, now confined at 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.]
03.10.2024

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
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J-7 Velachery Police Station,
Adyar District.

5.The Public Prosecutor,
Madras High Court.



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and
V.SIVAGNANAM, J.

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