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HCP.No.2317 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.2317 of 2024

Kavitha

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kallakurichi Collectorate,
Kallakurichi District.
- 3.The Superintendent,
Central Prison, Cuddalore,
Cuddalore.
- 4.The Superintendent of Police,
Kallakurichi SP Office Building,
Kallakurichi District.
- 5.The Inspector of Police,
Sankarapuram Police Station,
Kallakuruchi District.
Crime No.254 of 2024.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's Husband namely Elaiyaraja S/o.Gopal vide detention order dated 06.07.2024, on the file of the 2nd respondent herein made in the proceedings in D.O.No.C2/26/2024, quash the same and consequently direct the respondents herein to produce the body and person of the petitioner's husband namely Elaiyaraja, S/o.Gopal aged about 45 years, before this Court and thereafter set him at liberty from Central Prison, Cuddalore District.

For Petitioner : Mr.Maha Vishnu
for Ms.M.Gayathri

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 D.O.No.C2/26/2024 dated 06.07.2024 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 submitted that there is an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 25.05.2024 and thereafter, the detention order came to be passed on 06.07.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. 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 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



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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. 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 quashed the detention order on this ground.

7. 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



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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.

8. Accordingly, the detention order passed by the second respondent in D.O.No.C2/26/2024 dated 06.07.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Elaiyaraja, S/o.Gopal aged about 45 years, now confined in Central Prison, Cuddalore District. 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.]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kallakurichi Collectorate,
Kallakurichi District.
- 3.The Superintendent,
Central Prison, Cuddalore,
Cuddalore.
- 4.The Superintendent of Police,
Kallakurichi SP Office Building,
Kallakurichi District.
- 5.The Inspector of Police,
Sankarapuram Police Station,
Kallakuruchi District.
- 6.The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
- 7.The Public Prosecutor,
Madras High Court.

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