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HCP.No.2403 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2403 of 2024

Padma @ Padrakali

... Petitioner/Mother of
the Detenu

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Avadi City.
3. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 66.
4. The Inspector of Police,
Cyber Crime Wing,
Avadi City.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned order made in No.111/BCDFGISSSV/2024 dated 29.07.2024 passed by the second respondent herein and quash the same as illegal and improper and consequently direct the respondents to produce the detenu Mr.Ramesh Kumar, S/o. Vetrivel aged about 38 years, now confined and kept in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.Kingston Jerold
For Respondents : Mr. E. Raj Thilak
Additional Public Prosecutor

ORDER

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

The preventive detention order passed by the second respondent dated 29.07.2024 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.



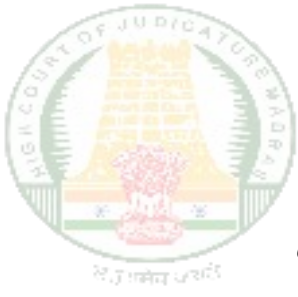
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3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 20.05.2024 and thereafter, the detention order came to be passed on 29.07.2024. 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



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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. 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.



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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 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. Further, the order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of six days in considering the representation. The delay in considering the representation and the period during which the detenu was under detention would be construed as violation of the Constitutional mandatory under Article 22 of Constitution of India and thus, the ground of delay in considering the representation became fatal in the case of preventive detention.

9. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and



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without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

10. The Hon'ble Supreme Court of India in the case of ***Rajammal vs. State of Tamil Nadu and Another¹***, it has been held as follows:

“7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words “as soon as may be” in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the

¹ [(1999) 1 SCC 417]



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disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India [(1991) 1 SCC 476 : 1991 SCC (Cri) 613] . The following observations of the Bench can profitably be extracted here: (SCC p. 484, para 12)

“It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words ‘as soon as may be’ occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in



the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.”

11. As per the dictum laid down by the Supreme Court in above cited *Rajammal's* case cited supra, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay has not been properly explained at all.

12. Further, in a recent decision in *Ummu Sabeena vs. State of Kerala*², the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

2 [2011 STPL (Web) 999 SC]



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13. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the petitioner.

14. Accordingly, the detention order passed by the 2nd respondent, No.111/BCDFGISSSV/2024 dated 29.07.2024, is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Rameshkumar, aged 38 years, s/o. Vetrivel confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.] [V.S.G., J.]
29.10.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Avadi City.
4. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 66.
5. The Inspector of Police,
Cyber Crime Wing,
Avadi City.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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

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