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H.C.P.No.2450 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2450 of 2024

R.Gopi .. Petitioner

v.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
2. The Commissioner of Police
Avadi City
Office of the Commissioner of Police
(Goondas Section), Tiruvallur
3. The Inspector of Police
M-5 Ennore Police Station
Tiruvallur District
4. The Superintendent of Prison
Central Prison, Puzhal, Chennai .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent



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dated 10.09.2024 in B.C.D.F.G.I.S.S.S.V.No.151/2024 against the petitioner's son Venkatesh @ Suruttai Venkatesh, son of Gopi, aged about 30 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.M.Muthuramalingam

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

ORDER

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

The petitioner herein, who is the father of the detenu, viz., Venkatesh @ Suruttai Venkatesh, S/o Gopi, aged 30 years, now confined at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the second respondent in No.151/BCDFGISSSV/2024 dated 10.09.2024.

2. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents.

3. The detaining authority relied on one adverse case registered in



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Crime No.22 of 2024 under the Narcotic Drugs and Psychotropic Substances Act. The ground case is registered in Crime No.596 of 2024 under the Narcotic Drugs and Psychotropic Substances Act. The learned Additional Public Prosecutor would submit that the detenu is involved in other criminal cases, numbering about 11 and pending. We have perused the details of those cases furnished before us. Many of the cases are registered in the year 2017 and some cases are registered in 2018 and 2019. One case each is registered in 2020, 2021 & 2022. All these cases can be dealt with under the law of the land. Mere registration of criminal case would be insufficient to form an opinion that there is a likelihood of breach of causing public order. As far as the detention order is concerned, one adverse case and the ground case relating to Narcotic Drugs and Psychotropic Substances Act were considered by the detaining authority. However, we find that there is an enormous delay in issuing the impugned order of detention. In the instant case, the detenu was arrested on 19.07.2024 and thereafter, the detention order came to be passed on 10.09.2024. This fact is not disputed by the learned Additional Public Prosecutor.



4. 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 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.”

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5. 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.

6. 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.



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7. Accordingly, the detention order passed by the second respondent in No.151/BCDFGISSSV/2024 dated 10.09.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Venkatesh @ Suruttai Venkatesh, S/o Gopi, aged 30 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.

Index : yes

(S.M.S.,J.)

(V.S.G.,J.)

Neutral citation : yes/no

25.10.2024

SS

To

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5. The Public Prosecutor
High Court, Madras

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