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HCP.No.2544 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2544 of 2024

Kaliyammal

... Petitioner/Mother of the
detenue

Vs.

1. State of Tamil Nadu
represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.
2. The Commissioner of Police,
Office of Commissioner of Police,
Avadi City.
3. Superintendent of Prison,
Central Prison-Cuddalore,
Cuddalore.
4. Inspector of Police,
T-5, Thiruverkadu Police Station,
Chennai.

... Respondents



HCP.No.2544 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records in Memo No.109/BCDFGISSSV/2024 passed by the 2nd respondent dated 27.07.2024, on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondent to produce petitioner's son Rajkumar Son of Saravanan aged about 36 years, before this Court, who now detained in central prison, Cuddalore and set him at liberty.

For Petitioner : Mr.A.Elumalai

For Respondents : Mr. R.Muniyapparaj
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 27.07.2024 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.



HCP.No.2544 of 2024

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 31.05.2024 and thereafter, the detention order came to be passed on 27.07.2024. 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



HCP.No.2544 of 2024

WEB COPY

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.



HCP.No.2544 of 2024

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. Accordingly, the detention order passed by the 2nd respondent, in proceedings BCDFGISSSV No.109 of 2024 dated 27.07.2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Rajkumar, aged 36 years, S/o. Saravanan confined at Central Prison, Cuddalore is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.] [M.J.R., J.]
13.11.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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HCP.No.2544 of 2024

To

WEB COPY

1. The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The Commissioner of Police,
Office of Commissioner of Police,
Avadi City.
4. Superintendent of Prison,
Central Prison-Cuddalore,
Cuddalore.
5. Inspector of Police,
T-5, Thiruverkadu Police Station,
Chennai.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



WEB COPY



HCP.No.2544 of 2024

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AND
M.JOTHIRAMAN, J.

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H.C.P.No.2544 of 2024

13.11.2024