



H.C.P.No.2496 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM :

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

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Saraswathi
W/o Kalaiselvan .. Petitioner

v.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent
Central Prison, Puzhal
Chennai
4. The Inspector of Police
Prohibition Enforcement Wing
St.Thomas Mount Unit, Chennai .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent pertaining to the order



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made in B.C.D.F.G.I.S.S.S.V.No.936/2024 dated 07.09.2024 in detaining the detenu under 2(e) of Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondents to produce the detenu Kalaiselvan, Son of Raman, aged about 28 years, who is detained at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.G.Nirmal Krishnan

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 wife of the detenu, viz., Kalaiselvan, S/o Raman, aged 28 years, now confined at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the second respondent in BCDFGISSSV No.936/2024 dated 07.09.2024.

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

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



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passing the order of detention.

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4. In the instant case, the detenu was arrested on 23.07.2024 and thereafter, the detention order came to be passed on 07.09.2024. 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



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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 second respondent in BCDFGISSSV No.936/2024 dated 07.09.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Kalaiselvan, S/o Raman, aged 28 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

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SS

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009



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2. The Commissioner of Police
Greater Chennai
Chennai 600 007

3. The Superintendent
Central Prison, Puzhal
Chennai 600 066

4. The Inspector of Police
Prohibition Enforcement Wing
St.Thomas Mount Unit, Chennai

5. The Public Prosecutor
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

V.SIVAGNANAM,J.

SS

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