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H.C.P.No.2511 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

H.C.P.No.2511 of 2024

Thulukkanam

S/o Mari

..

Petitioner

v.

1. The State of Tamil Nadu
represented by Secretary to Government
Prohibition & Excise Department
Fort St.George, Chennai 600 009

2. The Commissioner of Police
Avadi City
Office of the Commissioner of Police
(Goondas Section), Avadi
Chennai 600 054

3. The Superintendent of Police
Central Prison, Puzhal

4. The Inspector of Police
Minjur Police Station
Chennai 600 066

..

Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order dated 05.08.2024 passed by the second respondent in B.C.D.F.G.I.S.S.S.V.No.115 of 2024 and quash the same and direct the respondents herein to produce the petitioner's son Harish @ Eli, S/o Thulakkanam, aged 20 years, who is presently undergoing detention in the Central Prison, Puzhal before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :: Mr.P.Chandrasekar

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., Harish @ Eli, S/o Thulukkanam, aged 20 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.115/BCDFGISSSV/2024 dated 05.08.2024.

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 24.06.2024 and thereafter, the detention order came to be passed on 05.08.2024. 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 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. Accordingly, the detention order passed by the second respondent in No.115/BCDFGISSSV2024 dated 05.08.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Harish @ Eli, S/o Thulukkanam, aged 20 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

Neutral citation : yes/no

(S.M.S.,J.)

(V.S.G.,J.)

28.10.2024

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To

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S.M.SUBRAMANIAM,J.

AND

V.SIVAGNANAM,J.

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