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H.C.P.No.2036 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2036 of 2023

Shanthini

... Petitioner/Wife of Detenu

Vs.

1. The Secretary to Government,
Home, Prohibition @ Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The District Collector and District Magistrate,
Chengalpattu District, Chengalpattu.

3. The Superintendent of Police,
Chengalpattu, Chengalpattu District.

4. The Superintendent of Prison,
Central Prison-Puzhal, Chennai District.

5. State rep. by its
The Inspector of Police,
Madhuranthakam PEW Police Station,
Chengalpattu District. ... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records relating to my husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 29.09.2023 on the file of the second respondent herein made in proceedings Memo CPT No/63/2023 quash the same as illegal and consequently direct the respondents herein to produce her husband namely Kishore S/o.Chandrasekar aged 50 years before this Court and set her husband at liberty from detention now detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

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

The petitioner, wife of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.09.2023 slapped on her husband, branding him as "Bootlegger" under the Tamil Nadu Act 14 of 1982.



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2. Heard the learned counsel for the petitioner and 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 a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 17.08.2023 and the detention order was passed on 29.09.2023. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court in HCP No.1388 of 2022 [*Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332*], held as follows:

“6.... As between 08.04.2022 and 18.06.2022, it is well over two months and given the facts and circumstances of the instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped.”

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in *Sushanta Kumar Banik v. State of Tripura*, reported in 2022 LiveLaw (SC) 813, though in that case, the Hon'ble



Supreme Court did not directly deal with the issue of delay in passing the detention order after the arrest of the detenu. The relevant observations of the Hon'ble Supreme Court are 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.”

5. In yet another case i.e., in *Nagaraj v. State of Tamil Nadu*, reported in **(2018) 3 MWN (Cri) 428**, this Court 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. Therefore, we are of the view that in view of the unexplained delay in passing the order of detention after the arrest of the detenu, the detention order is liable to be quashed.



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6. Hence, for the aforesaid reason, the detention order passed by the

2nd respondent dated 29.09.2023 in Memo CPT No.63/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kishore, aged 50 years, S/o.Chandrasekar, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

22.01.2024

ars

Index : Yes / No

Neutral Citation : Yes / No

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition @ Excise Department,
Fort St. George, Chennai – 600 009.

2. The District Collector & District Magistrate,
Villupuram District, Villupuram.

3. The Superintendent of Prison,
Central Prison, Cuddalore.

4. The Superintendent of Police,
Villupuram District.

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5. The Inspector of Police,
CB-CID Villupuram Range, Villupuram.

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6. The Inspector of Police,
Marakkanam Police Station, Villupuram District.

7. The Public Prosecutor,
High Court, Madras.



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