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H.C.P.No.2079 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2079 of 2023

Shalini

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai - 66.

4.The Assistant Commissioner of Police,
Prohibition Enforcement Wing, Ambattur,
Avadi City.

... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records in connection with the order of Detention passed by the second respondent dated 16.09.2023 in Memo No.205/BCDFGISSSV/2023 against the petitioner's husband Ramkumar, Male aged 23, S/o. Senthilkumar who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before the Hon'ble Court and set him at liberty.

For petitioner : Mr.S.Senthilvel

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind,C.

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

The petitioner, wife of the detenu Ramkumar, S/o.Senthilkumar, aged 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 16.09.2023 slapped on her husband, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders,



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Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

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 03.08.2023 and the detention order was passed on 16.09.2023. 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



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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.



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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.

6. Hence, for the aforesaid reason, the detention order passed by the 2nd respondent dated 16.09.2023 in No.205/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Ramkumar, S/o.Senthilkumar, aged about 23 years, 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]
18.01.2024

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Index : Yes / No

Neutral Citation : Yes / No



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- 5.The Public Prosecutor,
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6. The Joint Secretary,
Law and Order Department,
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