



WEB COPY



HCP.No.2089 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2089 of 2023

L.Vijayakumar

... Petitioner / brother of the detainee

Vs.

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

2.District Collector and District Magistrate of
Villupuram District, Villupuram.

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

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, to call for the records in connection with the
order of Detention passed by the second respondent dated 07.10.2023 in



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Rc.No.C2/61961/2023 against the petitioner's brother, Gnanavel, Male, aged 25 years, S/o.Loganathan, who is confined at Central Prison Cuddalore, and set aside the same and direct the respondents to produce the detenue before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner herein, who is the brother of the detenu Gnanavel, aged 25 years, S/o.Loganathan, who is confined at Central Prison Vellore, has come forward with this petition challenging the detention order passed by the second respondent dated 07.10.2023 slapped on his brother, branding him as "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, 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].



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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 a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 27.08.2023 and the detention order was passed on 07.10.2023. In a similar case, where there was a delay in passing the detention order dated 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.”



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This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in '**Sushanta Kumar Banik Vs. 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 Vs. State of Tamil Nadu**', reported in '**(2018) 3 MWN (Cri) 428**', this Court held that the delay of 36



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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.

6. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 07.10.2023 in Rc.No.C2/61961/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Gnanavel, aged 25 years, S/o.Loganathan, who is confined at Central Prison Cuddalore, 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]
13.02.2024

Index: Yes/No
Neutral Citation: Yes/No
Anu



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Anu

To

- 1.The Secretary to the Government,
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- 3.The Superintendent of Police,
Villupuram District, Villupuram.
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Central Prison, Cuddalore.
- 5.The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
- 6.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.
- 7.The Public Prosecutor,
High Court, Madras.

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