



HCP.No.2691 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2691 of 2024

Dawlat Nisha

... Petitioner

Vs.

1.The State rep by its
Government of Tamil Nadu
The Additional Chief Secretary
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

3. The Superintendent of Prison
Central Prison, Puzhal, Chennai District.

4.The Inspector of Police,
H3 Tondiarpet Police Station,
Chennai 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 Detention order



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passed in No.857/BCDFGISSSV/2024 dated 17.08.2024 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the person or body of the petitioner's son Tr.Abdul Kareem M/A25 years s/o.Muhammed Yusuf now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.D.Padmanabhan

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

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

The order of detention passed by the 2nd respondent in proceedings No.857/BCDFGISSSV/2024 dated 17.08.2024 is sought to be quashed in the present Habeas Corpus Petition.

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

3. The learned counsel for the petitioner submitted that there is an



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inordinate delay in passing the order of detention.

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4. The learned Additional Public Prosecutor would submit that in view of Section 37 of NDPS Act, there is bar for grant of bail, therefore granting relief against impugned preventive detention order will not be a ground to consider for grant of bail to the detenu and it is to be considered on merits.

5. In the instant case, the detenu was arrested on 15.06.2024 and thereafter, the detention order came to be passed on 17.08.2024. This fact is not disputed by the learned Additional Public Prosecutor.

6. 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



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hereunder:-

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“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.”

7. 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



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and proximate link between them would also stand snapped and thereby, had quashed the detention order on this ground.

8. 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.

9. Accordingly, the detention order passed by the second respondent in No.857/BCDFGISSSV/2024 dated 17.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Abdul Kareem Male aged 25 years S/o.Mohammed Yusuf who is 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.

[S.M.S., J.]

[M.J.R., J.]



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Index: Yes/No

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AND
M.JOTHIRAMAN, J.

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To

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The Additional Chief Secretary
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5.The Public Prosecutor,
Madras High Court.

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