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H.C.P.No.2110 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2110 of 2023

Rani

... Petitioner

Vs.

1. Government of Tamil Nadu
Represented by its
The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Magistrate and District Collector
District Collector Office
Thiruvallur District.
3. The Superintendent of Police,
District Superintendent Office,
Thiruvallur District.
4. The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.



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5. The Inspector of Police,
PEW Gummidipoondi
Thiruvallur District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records in Detention order passed in Memo BCDFGISSSV No.30/2023 dated 21.09.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of petitioner's son Alexpandian @ Alex, M/25 years, S/o. Asaithambi now confined in Central Prison-II, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For petitioner : Mr.D. Padmanabhan
For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

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

The petitioner, mother of the detenu Alex Pandian @ Alex aged 25 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.09.2023, in BCDFGISSSV No.30/2023, slapped on her son, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14/1982.



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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 18.06.2023 and the detention order was passed on 21.09.2023. 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.”



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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 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 21.09.2023, in BCDFGISSSV No.30/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Alex Pandian @ Alex, S/o.Asaithambi, aged about 25 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]
29.01.2024**

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Index : Yes / No

Neutral Citation : Yes / No



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