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HCP.No.2140 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM :

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

H.C.P.No.2140 of 2023

Sadhaniya

... Petitioner/ wife of the detenu

Vs.

1.The Principal Secretary to Government,
Public (L & O-F) Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Office of Police Commissioner,
EVR Periyar Salai, Vepery,
Chennai-600007.

3.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi-110 001.

4.The Superintendent,
Central Prison,
Vellore.



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5.The Inspector of Police,
V4 Rajamangalam Police,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records relating to the detention order No.01/NSA/2023, dated 21.10.2023 passed by the second respondent under the National Security Act set aside and quash the same and direct the respondent to produce the body or person of the detenu namely Syed Abuthahir, S/o.Kuthus, now confined at Central Prison, Vellore, before this Court and set the petitioner at liberty forthwith.

For Petitioner	: Mr.F.Camilus Selva
For Respondents	: Mr.E.Raj Thilak Additional Public Prosecutor High Court of Madras assisted by Mr.C.Aravind for R1, R2, R4 and R5 Mr.Rajesh Vivekandan Deputy Solicitor General for R3

ORDER

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

The petitioner herein is the wife of the detenu viz., Syed Abuthahir, S/o.Kuthus, confined at Central Prison, Vellore, has come forward with



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this petition challenging the detention order passed by the second respondent dated 21.10.2023 slapped on her husband under Sub Section (2) of Section 3 of the National Security Act, 1980 (Central Act, 65 of 1980) read with orders issued by the Government in G.O.Ms.No.632, Public (Law & Order-F) Department under Sub Section (2) of Section 3 of the said Act.

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 an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 14.09.2023 and thereafter, the detention order came to be passed on 21.10.2023. This fact is not disputed by the learned Additional Public Prosecutor.



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5. 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 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



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and circumstances of each case.”

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

7. 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.



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8. Accordingly, the detention order passed by the second respondent on 21.10.2023 in No.01/NSA/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Syed Abuthahir, S/o.Kuthus, now confined at Central Prison, Vellore, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

24.04.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Anu

To

1.The Principal Secretary to Government,
Public (L & O-F) Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Office of Police Commissioner,
EVR Periyar Salai, Vepery,
Chennai-600007.

3.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi-110 001.



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4.The Superintendent,
Central Prison,
Vellore.

5.The Inspector of Police,
V4 Rajamangalam Police,
Chennai.

6.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai

7.The Public Prosecutor,
High Court, Madras.



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and
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