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HCP.No.2157 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

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

H.C.P.No.2157 of 2023

S. Dineshkumar

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamilnadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.

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

4.The Inspector of Police,
Sunguvarchatram Police Station,
Kancheepuram District.

5.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the order of the 2nd respondent herein in Rc.No.174/2023/M6-D.O.No.31/2023 dated 28.09.2023 passed against the petitioner the detenu namely Dineshkumar, S/o.Santhanam, aged about 21 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same. Consequently, directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.J. Arul Prakasam

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

ORDER

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

The petitioner herein, who is the detenu, has come forward with this petition challenging the detention order passed by the second respondent dated 28.09.2023 slapped on him, branding him as "Goonda" 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 has surrendered on 07.08.2023 and the detention order was passed on 28.09.2023. 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



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case.”

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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 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. At this juncture, the learned Additional Public Prosecutor, on instructions, submitted that there may be a life threat and retaliation occurrences in view of the nature of allegation against the detenu.

7. As a special case, though we are inclined to quash the detention order, we direct the detenu to stay in Madurai and report before the Tallakulam Police Station, twice a week until further orders. It is also made clear that he shall appear before the Trial Court on all hearing dates.



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8. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 28.09.2023 in Rc.No.174/2023/M6-D.O.No.31/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Dineshkumar, aged 21 years, S/o.Santhanam, is directed to be set at liberty forthwith, unless he is required in connection with any other case. However, the detenu is directed to stay in Madurai and report before the Tallakulam Police Station, twice a week until further orders and he shall appear before the Trial Court on all hearing dates.

[M.S.R., J] [S.M., J]
01.02.2024

Index: Yes/No
Neutral Citation: Yes/No

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and
SUNDER MOHAN, J.

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