



WEB COPY



H.C.P.No.2800 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

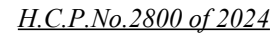
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.2800 of 2024

Shareali
S/o Mohammad Yakub .. Petitioner

v.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
2. The Commissioner of Police/Detaining Authority
Huzur Road, Coimbatore City
Coimbatore-18
3. The Superintendent of Prison
Central Prison-Coimbatore
Coimbatore District
4. State rep.by its
The Inspector of Police
PEW-Coimbatore
Coimbatore .. Respondents



For Petitioner	::	Mr.M.L.Joseph for M/s Chennai Law Associates
For Respondents	::	Mr.R.Muniyapparaj Additional Public Prosecutor

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

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



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3. Based on the ground case registered under the NDPS Act, the provisions of Act 14 of 1982 has been invoked against the detenu. No adverse case is relied upon. The learned Additional Public Prosecutor is not able to establish that the detenu is a habitual offender. Near about 3½ kilograms of ganja has been recovered and the ground case was registered. The detenu was arrested on 24.07.2024 and the order of detention was issued on 28.08.2024. Thus there is a delay. That apart, the learned counsel for the petitioner would submit that bail has already been granted.

4. 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 and circumstances of each case.”

5. 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.

6. In yet another case i.e., in '***Nagaraj Vs. State of Tamil Nadu***',



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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.

7. Accordingly, the detention order passed by the second respondent in proceedings C.No.103/G/IS/2024 dated 28.08.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., S.Amjithkhan, S/o Shareali, aged 23 years, now confined at Central Prison, Coimbatore is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

Index : yes

Neutral citation : yes/no

(S.M.S.,J.)

(M.J.R.,J.)

27.11.2024

ss

To



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5. The Public Prosecutor
High Court, Madras



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