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H.C.P.No.2889 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.2889 of 2024

Vijay
S/o Vengatesh

.. Petitioner

v.

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
2. The District Collector and District Magistrate
of Villupuram District, Villupuram
3. The Superintendent of Police
Villupuram District, Villupuram
4. The Superintendent of Prison
Central Prison, Cuddalore
5. The Inspector of Police
Arakandanallur Police Station
Villupuram District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying



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for issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 19.09.2024 in Rc.No.C2/51/2024 against the petitioner's brother Krishnan, Male, aged 26 years, S/o Vengatesh, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner :: Mr.D.Balaji

For Respondents :: Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner, who is the brother of the detenu, viz., Krishnan, S/o Vengatesh, aged 26 years, now confined at Central Prison, Cuddalore has come forward with this petition challenging the detention order passed by the second respondent in proceedings Rc.No.C2/51/2024 dated 19.09.2024.

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

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



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adverse case is relied upon. The detenu was arrested on 28.07.2024 and the order of detention was issued on 19.09.2024. That apart, the learned counsel for the petitioner would submit that the booklet was supplied to the detenu only on 23.10.2024. At every stage, there is a delay in compliance of the provisions of Act 14 of 1982, which would vitiate the entire proceedings.

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



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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***', 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



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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 Rc.No.C2/51/2024 dated 19.09.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Krishnan, S/o Vengatesh, aged 26 years, now confined at Central Prison, Cuddalore 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.)

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SS

To



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High Court, Madras



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