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HCP.No.2218 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.2218 of 2023

Surya

... Petitioner

Vs.

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 09.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
- 4.The Superintendent of Prison,
Central Prison, Puzhal - II,
Chennai – 66.
- 5.The Inspector of Police,
Sunguvarchatram Police Station,
Kancheepuram District.

... 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 records in connection with the order of detention passed by the second respondent dated 18.10.2023 in Memo Rc.No.175/2023/M6-D.O.No.36/2023 against the petitioner namely Surya, S/o.Mohan, aged about 23 years, who is confined at Central Prison, Puzhal - II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

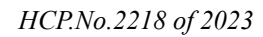
For Petitioner : Mr.S.Senthilvel

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 18.10.2023 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].



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.

“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 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 18.10.2023 in Rc.No.175/2023/M6-D.O.No.36/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Surya, aged 23 years, S/o.Mohan, 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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To
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- 1.The Secretary to Government,
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- 6.The Public Prosecutor,
High Court, Madras.



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

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