



H.C.P.No.2825 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

CORAM :

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

H.C.P.No.2825 of 2024

Jothi Arumugam

.. Petitioner/
Wife of the Detenue

v.

1. The State of Tamil Nadu
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
(Goondas Section),
Avadi, Chennai 600 045.
3. The Inspector of Police,
T6, Peerankaranai Police station,
Chennai.



H.C.P.No.2825 of 2024

WEB COPY

4. The Superintendent,
Central Prison II,
Puzhal, Chennai 600 066

.. Respondents

Petition filed under Article 226 of Constitution of India to issue a Writ of Habeas Corpus to call for the records made in impugned No.87/BCDFGISSSV/2024 dated 01.08.2024 on the file of the Commissioner of Police, Tambaram City, Chennai 600 045 the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detainee V.Kumar, aged 24 years, son of Venkatesan, now confined at Central Prison, Puzhal II, Chennai 66.

For Petitioner :: Mr.R.Sankarasubbu

For Respondents :: Mr.R.Muniyapparaj
Additional Public Prosecutor
for R1 to R4

ORDER

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

The petitioner, who is the Wife of the detenu, viz., Kumar S/o Venkatesan, aged 25 years, now confined at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent in proceedings No.87/BCDFGISSSV/2024 dated



H.C.P.No.2825 of 2024

01.08.2024.

WEB COPY

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 24.06.2024 and thereafter, the detention order came to be passed on 01.08.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. Admittedly, the alleged offence has been committed between two groups on personal vengeance. In such circumstances, the police authorities have to identify these persons and monitor their activities closely by conducting surveillance, if required. However, invoking preventive detention law with an idea to punish the accused cannot be encouraged by the Courts, since preventive detention law is not only draconian but violation of the right to liberty.



WEB COPY

6. 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



WEB COPY



H.C.P.No.2825 of 2024

snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

7. 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.

8. 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



H.C.P.No.2825 of 2024

order in the present case, is liable to be quashed.

WEB COPY

9. Accordingly, the detention order passed by the second respondent in proceedings No.87/BCDFGISSSV/2024 dated 01.08.2024 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Kumar S/o Venkatesan, aged 25 years, now confined at Central Prison, Puzhal, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

Index : yes

(S.M.S.,J.)

(M.J.R.,J.)

Neutral citation : yes/no

28.11.2024

rka

To

1. The State of Tamil Nadu
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
(Goondas Section),
Avadi, Chennai 600 045.
3. The Inspector of Police,
T6, Peerankaranai Police station,
Chennai.
4. The Superintendent,



H.C.P.No.2825 of 2024

Central Prison II,
Puzhal, Chennai 600 066

5. The Public Prosecutor
High Court, Madras



WEB COPY



H.C.P.No.2825 of 2024

S.M.SUBRAMANIAM,J.

AND

M.JOTHIRAMAN,J.

rka

H.C.P.No.2825 of 2024

28.11.2024