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H.C.P.No.2249 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2249 of 2023

Muthu Kumar @ Madhan

... Petitioner

Vs.

The State of Tamilnadu,
1.Rep. by the Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Veppery, Chennai-600 007.

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

4.The Inspector of Police (L&O)
E-5, Fore Shore Estate Police Station,
Chennai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the
Constitution of India, praying for the issuance of Writ of Habeas Corpus,



H.C.P.No.2249 of 2023

calling for records of the second respondent in detention order in No.431/BEDFGISSSV/2023 dated 29.09.2023 passed by the second respondent under the Tamil Nadu Act, 14 of 1982 and set aside the same as illegal and unconstitutional and also direct the respondents to produce the detenu Muthu Kumar @ Madhan, S/o.ArumugaRaj, TPDA No.4780, aged 29 years, now confined at Central Prison, Puzhal, Chennai and set him at liberty.

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

ORDER

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

The petitioner herein is the detenu viz., Muthu Kumar @ Madhan, S/o.ArumugaRaj, TPDA No.4780, aged 29 years, now confined at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the second respondent dated 29.09.2023 slapped on him, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand



H.C.P.No.2249 of 2023

Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner focussed mainly on the ground that there is an unexplained delay in serving the grounds of detention. According to the learned counsel for the petitioner, though the detention order was passed on 29.09.2023, the grounds of detention was served on the detainee only on 06.10.2023, which is in violation of mandatory provision under Section 8 (1) of the Tamil Nadu Act 14 of 1982.

4. In the instant case, though the detainee was detained on 29.09.2023 through the detention order, the grounds of the detention was served only on 06.10.2023, which is on the eighth day. Under Section 8 (1) of the Tamil Nadu Act 14 of 1982, the detaining authority is



H.C.P.No.2249 of 2023

mandated to communicate the grounds of detention within a period of five (5) days. The computation of the period of five days had considered before the Coordinate Bench of this Court in the case of ***Vasanthi vs. the Secretary to Government and others***, passed in H.C.P.Nos.1407 and 1410 of 2023, dated 29.08.2023, wherein reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Enforcement Directorate, Government of India vs. Kapil Wadhawan and another***, reported in 2023 SCC OnLine SC 972, and held as follows:

"9.3

.....*It was a reference before the Hon'ble Larger Bench, however, as that is also a matter of curtailment of liberty (as in the case on hand), we draw inspiration from Kapil Wadhawan principle and hold that while computing five days within the meaning of Section 8(1) of Act 14 of 1982, the date on which the preventive detention order is served on the detenu i.e., formal arrest pursuant to the preventive detention order should also be included.*"

5. Thus, when the order of detention is taken into consideration for the purpose of computing five days period, the detaining authority has served it on the eighth day, which is opposite to the ratio laid down by



H.C.P.No.2249 of 2023

the Hon'ble Supreme Court as followed by the Coordinate Bench of this Court in *Vasanthi's case*.

6. In view of the violation of the mandatory provision under Section 8 (1) of the Tamil Nadu Act 14 of 1982, the order of detention cannot be legally sustained.

7. Accordingly, the detention order passed by the second respondent, in No.431/BEDFGISSSV/2023, dated 29.09.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Muthu Kumar @ Madhan, S/o.ArumugaRaj, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
26.02.2024
(4/6)

Index: Yes/No
Speaking/Non-speaking order

Anu



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H.C.P.No.2249 of 2023

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

Anu

To

1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
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2.The Commissioner of Police,
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Office of the Commissioner of Police,
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