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H.C.P.No.2288 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.2288 of 2023

Kokila

... Petitioner/wife of the detenue

Vs.

1.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai.

2.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009

3.The Superintendent,
Central Prison,
Puzhal, Chennai-600 066.

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,



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calling for the records pertaining to the order of detention passed by the first respondent herein and made in Memo No.435/BCDFGIISSSV/2023 dated 29.09.2023, and to set aside the same and direct the third respondent to produce the detenu, my husband, Thiru.John Kennedy @ Kennedy, aged 53 years, S/o.Clement, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ganesh Rajan
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, who is the wife of the detenu viz., John Kennedy @ Kennedy, aged 53 years, S/o.Clement, now confined in Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the first respondent dated 29.09.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act



14 of 1982].

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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 04.10.2023, 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 04.10.2023, which is on the sixth day. Under Section 8 (1) of the Tamil Nadu Act 14 of 1982, the detaining authority is mandated to communicate the grounds of detention within a period of five (5) days.



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The computation of the period of five days was considered by 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 sixth day, which is opposite to the ratio laid down by the Hon'ble Supreme Court as followed by the Coordinate Bench of this



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Court in *Vasanthi's case*.

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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 Memo No.435/BCDFGISSSV/2023, dated 29.09.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., John Kennedy @ Kennedy, aged 53 years, S/o.Clement, now confined in Central Prison, Puzhal, Chennai, 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
(5/6)

Index: Yes/No
Speaking/Non-speaking order

Anu



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

Anu

To

1.The Commissioner of Police,
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