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H.C.P.No.2347 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2347 of 2023

Swetha

... Petitioner

Vs.

1. State of Tamil Nadu
Represented by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Avadi City, Avadi, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai 600 066.
4. The Inspector of Police
Law & Order
M-4, Redhills Police Station,
Chennai 600 052.

... Respondents

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



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to issue Writ of Habeas Corpus, calling for the records leading to the detention of the petitioner's husband namely Tamilarasan, Son of Thirupathy, vide detention order dated 13.10.2023 on the file of the 2nd respondent herein made in the proceedings in No.217/BCDFGISSSV/2023 dated 13.10.2023 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Hon'ble Court and set him at liberty from Central Prison, Puzhal, Chennai.

For petitioner : Mr.M. Murali Ragul
for Mr.R. Subramanian

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

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

The Petitioner, wife of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against her husband, in No.217/BCDFGISSSV/2023 dated 13.10.2023, branding the detenu as a "GOONDA" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



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2. Heard the learned counsel for the petitioner and 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 a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 02.09.2023 and the detention order was passed on 13.10.2023. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court in HCP No.1388 of 2022 [**Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332**], held as follows:

"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



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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 v. 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



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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. In yet another case i.e., in ***Nagaraj v. 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.

6. Therefore, though, 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, we have also taken into consideration the sensitivity of the case involved and the objections of the learned Additional Public Prosecutor that there may be some law and order problem from the families of the victims in Chennai.

7. In this background, to secure the ends of justice, this Habeas



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Corpus Petition is allowed on the following conditions.

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(i) The detention order passed by the 2nd respondent dated 13.10.2023 in No.217/BCDFGISSSV/2023, is set aside.

(ii) The detenu viz., Tamilarasan, aged 29 years, S/o.Thirupathi, 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.

(iii) The detenu is directed to stay within the revenue district of Vellore and report before the Inspector of Police, Sathuvacheri Police Station, Vellore, daily at 10.30 am, except the trial court's hearing dates, until further orders.

**[M.S.R., J] [S.M., J]
19.02.2024**

bga

Index : Yes / No

Neutral Citation : Yes / No



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To

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5. The Public Prosecutor
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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