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HCP.No.2336 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2336 of 2023

Basheer Ahamed

... Petitioner/ detenue

Vs.

1.The Secretary to the Government of Tamilnadu,
Public (SC) Department, Secretariat,
Chennai-600 009.

2.The Secretary to the Government of Tamilnadu,
Public Law & Order Department,
Secretariat,
Chennai-600 009.

3.The Secretary to the Government of India,
Ministry of Finance, Department of Revenue,
(Cofeposa Unit),
Central Economic Intelligence Bureau,
Janpath Bhavan,
B-Wing, 6th Floor, Janpath,
New Delhi-110 001.



HCP.No.2336 of 2023

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

5.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
No.27, G.N.Chetty Road,
T.Nagar,
Chennai-600 017.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the proceedings of the first respondent herein in G.O.No.SR.I/72-5/2023 dated 10.10.2023 and quash the same and produce the detainee Thiru.Basheer Ahamed, Male, aged 43 years, S/o.Hyder Ali COFEPOSA.No.4873 now detained at Central Prison, Puzhal, Chennai, before this Court 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
for R1, R2 and R4

Mr.Prasad Vijayakumar
Senior Panel Central Government
Counsel for R3 and R5



HCP.No.2336 of 2023

ORDER

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

The petitioner herein is the detenu viz., Basheer Ahamed, aged 43 years, S/o.Hyder Ali, COFEPOSA.No.4873, now detained at Central prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the first respondent dated 10.10.2023 slapped on him, in exercise of the powers conferred under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

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.



HCP.No.2336 of 2023

WEB COPY

4. In the instant case, the detenu was arrested on 10.05.2023 and thereafter, the detention order came to be passed on 10.10.2023. This fact is not disputed by the learned Additional Public Prosecutor.

5. Mr.E.Raj Thilak, learned Additional Public Prosecutor, by placing reliance on Paragraph 9 of the counter affidavit filed by the first respondent, submitted that the delay was predominately on the part of the Sponsoring Authority. He stated that as soon as the documents were received from the Sponsoring Authority on 30.08.2023, the detention order was passed on 10.10.2023.

6. We are not in agreement with the explanation rendered by the first respondent for the inordinate delay in Paragraph 9 of his counter affidavit which reads as follows:

"9. With regard to the averments made on the grounds (d) in paragraph 9 of the Affidavit, it is respectfully submitted that after receipt of the proposal for detention of the petitioner/detenu from the Sponsoring Authority on 30.06.2023, despite various correspondence were obtained vide letters dated



WEB COPY



HCP.No.2336 of 2023

11.07.2023, 26.07.2023, 07.08.2023 and 17.08.2023, the last required document was received from the Sponsoring authority only on 30.08.2023. Based on the documents furnished by the Sponsoring authority and after arriving to a subjective satisfaction, the detention order was passed by the Detaining authority on 10.10.2023 with due application of mind. Therefore it is submitted that there was nexus between the date of incident and passing of detention order and the allegations in this regard are made with an intention to escape from the clutches of law. As such the averments made in this paragraph are unwarranted and unsustainable."

7. Even assuming that there was a delay on the part of the sponsoring authority in sending the required documents to the first respondent, the last of such documents was received by the first respondent on 30.08.2023. However, the detention order came to be passed only on 10.10.2023. Therefore, there is an unexplained and inordinate delay of about 40 days in passing the detention order.



HCP.No.2336 of 2023

WEB COPY

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



HCP.No.2336 of 2023

WEB COPY

9. 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.

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

11. Accordingly, the detention order passed by the first respondent on 10.10.2023 in G.O.No.SR.I/72-5/2023, is hereby set aside and the



HCP.No.2336 of 2023

Habeas Corpus Petition is allowed. The detenu viz., Basheer Ahamed, aged 43 years, S/o.Hyder Ali, COFEPOSA.No.4873, now detained at Central prison, Puzhal, Chennai, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

19.03.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Anu

To

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6.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

7.The Public Prosecutor,
High Court, Madras.



WEB COPY



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