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H.C.P.No.2478 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2478 of 2023

M. Paulraj

... Petitioner

Vs.

1. The State of Tamilnadu,
Represented by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of police,
Greater Chennai,
Veppery, Chennai 600 007.
3. The Superintendent of Prison,
Central Prison Puzhal, Chennai 600 066
4. The Inspector of Police,
Railway Police Station,
Chennai Central, Chennai 600 003.

....Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records of the 2nd respondent herein in BCDFGISSSV No.494/2023 dated 19.10.2023, quash the same and direct the 3rd respondent herein to produce the body of the detenu, Nithish Kumar, Son of Paulraj, aged 24 years, detained as Drug Offender and confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For petitioner : Mr.S.V. Karthikeyan

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

ORDER

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

The petitioner, who is the father of the detenu Nithishkumar, aged 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.10.2023, in BCDFGISSSV No.494/2023, slapped on his son, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14/1982.



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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 21.08.2023 and the detention order was passed on 19.10.2023. 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 purpose of detention had in fact snapped.”



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 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.



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Therefore, 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.

6. Hence, for the aforesaid reason, the detention order passed by the 2nd respondent dated 19.10.2023, in BCDFGISSSV No.494/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nithishkumar, S/o.Paulraj, aged about 24 years, 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]
23.02.2024**

bga

Index : Yes / No

Neutral Citation : Yes / No



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To

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Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of police,
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Veppery, Chennai 600 007.
3. The Superintendent of Prison,
Central Prison Puzhal, Chennai 600 066
4. The Inspector of Police,
Railway Police Station,
Chennai Central, Chennai 600 003.
6. The Public Prosecutor, High Court, Madras.
7. The Joint Secretary, Law and Order Department,
Secretariat, Chennai.



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