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HCP.No.2571 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

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

H.C.P.No.2571 of 2023

Thowfiq

... Petitioner / Detenue

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Detaining Authority,
Chennai City,
Chennai - 600 007

3.The Superintendent of Prison,
Central Prison,
Vellore District,
Vellore.

4.The Inspector of Police,
N-3, Muthiyalpet Police Station,
Chennai.

... Respondents



HCP.No.2571 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent in Memo No.394/BCDFGISSSV/2023, dated 12.09.2023 against detenu, namely THOWFIQ, son of Sahul Hameed, aged about 47, who is now confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Jaya Kumar

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

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein, is the detenu, Thowfiq, son of Sahul Hameed, aged about 47, has come forward with this petition challenging the detention order passed by the second respondent dated 12.09.2023 slapped on him, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



HCP.No.2571 of 2023

WEB COPY

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 a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 27.07.2023 and the detention order was passed on 12.09.2023. In a similar case, where there was a delay in passing the detention order dated 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.”



HCP.No.2571 of 2023

WEB CO

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in '**Sushanta Kumar Banik Vs. 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.”



HCP.No.2571 of 2023

5. In yet another case i.e., in '*Nagaraj Vs. 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. 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 reasons, the detention order passed by the second respondent on 12.09.2023 in Memo No.394/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thowfiq, son of Sahul Hameed, aged about 47, 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]
02.02.2024

Index: Yes/No
Neutral Citation: Yes/No
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WEB COPY



HCP.No.2571 of 2023

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

Anu

To

The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Detaining Authority,
Chennai City,
Chennai - 600 007

3.The Superintendent of Prison,
Central Prison,
Vellore District,
Vellore.

4.The Inspector of Police,
N-3, Muthiyalpet Police Station,
Chennai.

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

6.The Additional Public Prosecutor,
High Court, Madras.

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