



H.C.P.(MD) No.129 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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Vellaisamy

... Petitioner

-VS-

- 1.The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St., George,
Chennai-9.
- 2.The District Magistrate and District Collector,
Theni District,
Theni.
- 3.The Superintendent of Police,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Devadanapatti Police Station,
Theni District.

... Respondents



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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 Detention Order passed by the second respondent in Detention Order No. 53/2023, dated 22.09.2023 and to quash the same and direct the respondents to produce the body or person of the detenu, Arikrishnaraj, son of Vellaisamy, aged about 25 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.L.Siva

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the father of the detenu viz., Arikrishnaraj, aged about 25 years, son of Vellaisamy. The detenu has been detained by the second respondent by his order No.53/2023, dated 22.09.2023 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.



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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 have been raised in the Habeas Corpus Petition, learned counsel appearing for the petitioner would mainly focus his arguments on the ground that there is an inordinate delay between the arrest of the detenu and passing the impugned detention order. In this case, the detenu was arrested on 07.07.2023, and the impugned Detention order came to be passed only on 22.09.2023, i.e., after a lapse of 2 1/2 months. This inordinate delay in passing the detention order would vitiate the same. He further submitted that there is no live and proximate link between the date of arrest and the date of the detention order. Hence, on the above ground, the present impugned detention order is also liable to be set aside.



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4. The learned Additional Public Prosecutor strongly opposed the habeas corpus petition by filing his counter. He would submit that though there was a delay in passing the detention order, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu.

5. The detenu was arrested in the ground case as early as on 07.07.2023 and the detention order was passed on 22.09.2023. This shows an inordinate delay in passing the detention order, which is also unexplained. The live and proximate link between the arrest of the detenu and the need for passing the order of detention has snapped. Thus, on this sole ground alone, the impugned order of detention is liable to be set aside.

6. In the case of '***Sushanta Kumar Banik Vs. State of Tripura***' reported in ***2022 SCC Online (SC) 1333***, when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of actual arrest and the date of detention order, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped throwing



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a considerable doubt on the genuineness of the requisite satisfaction of the detaining authority in passing the detention order unless such delay is satisfactorily explained and consequently making in invalid. 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."

7. In the result, the Habeas Corpus Petition is allowed and the order of detention No.53 of 2023, dated 22.09.2023, passed by the second



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respondent is set aside. The detenu, viz., Arikishnaraj, aged about 25 years, son of Vellaisamy, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.]

[K.R.S., J.]

03.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
am

To

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Home, Prohibition and Excise Department,
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Chennai-9.
- 2.The District Magistrate and District Collector,
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Madurai Bench of Madras High Court,
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