WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

H.C.P.(MD) No.339 of 2024

Simon Kishore @ Killer ... Petitioner

-vs-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Office of the Commissioner, Trichy.

3.The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in No.

https://www.mhc.tn.gov.in/judis

WEB COPY

05/Detention/C.P.O/T.C/2024, dated 10.01.2024, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner, namely, Simon Kishore alias Killer, son of John Louis, aged about 21 years now confined in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.V. KARTHIKEYAN, J.]

The petitioner is the detenu namely, Simon Kishore alias Killer, aged about 23 years. The detenu has been detained by the second respondent by his order in No.05/Detention/C.P.O/T.C/2024, dated 10.01.2024 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.

https://www.mhc.tn.gov.in/judis

WEB COPY

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 06.12.2023, and the impugned detention order came to be passed only on 10.01.2024, i.e., after a lapse of 34 days. 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 this ground, the present impugned detention order is also liable to be set aside.

4. Learned Additional Public Prosecutor appearing for the respondents strongly opposed the habeas corpus petition by filing his counter. He would submit that though there was a delay in passing the impugned detention

https://www.mhc.tn.gov.in/judis

WEB COPY

order, on that score alone, it cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition.

5. The detenu was arrested in the ground case as early as on 06.12.2023 and the detention order was passed on 10.01.2024. 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 Honourable Supreme Court has held that the live and proximate link, between the grounds and the purpose of detention, stands snapped throwing a considerable doubt on the genuineness of the requisite satisfaction of the detaining authority in passing the

https://www.mhc.tn.gov.in/judis

WEB COPY

detention order unless such delay is satisfactorily explained and consequently making it invalid. The relevant portion 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 view of the above, as pointed out by the counsel for the petitioner, the delay has not been satisfactorily explained, thereby vitiating and

https://www.mhc.tn.gov.in/judis

WEB COPY

invalidating the detention order.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.05/Detention/C.P.O/T.C/2024 dated 10.01.2024, passed by the second respondent is set aside. The detenu, viz., Simon Kishore alias Killer, aged about 21 years son of John Louis, is directed to be released forthwith unless his detention is required in connection with any other case.

[C.V.K., J.] [J.S.N.P., J.]

09.08.2024

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

PKN

https://www.mhc.tn.gov.in/judis

WEB COPY

To:

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Office of the Commissioner, Trichy.

3.The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

C.V. KARTHIKEYAN, J.
AND
J.SATHYA NARAYANA PRASAD, J.

PKN

H.C.P.(MD) No.339 of 2024

09.08.2024

https://www.mhc.tn.gov.in/judis