



H.C.P.(MD).No.1415 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD).No.1415 of 2023

N.Esakkithai

... Petitioner/ Brother of the Detenu
Vs.

1.The Additional Chief Secretary of Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Inspector of Police,
Thisaiyanvilai Police Station,
Tirunelveli District.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's brother namely Sudalaikannu @ Durai, S/o.Esakkipandi, aged about 35 years vide detention order dated 13.09.2023 made in M.H.S.Confdl No.105/2023 passed by the second respondent and quash the same and consequently direct the respondents to produce the body or person of the detenue now and set his at liberty.

For Petitioner : Mr.C.Venkatesh
for Mr.M.Murugesan

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The petitioner is the brother of the detenu by name Sudalai Kannu @ Durai. The detention order dated 13.09.2023 is under challenge on three grounds. The first ground is that the ground case was registered on 14.08.2023 for the offence under Sections 294(b), 353, 506(ii) IPC and 25(1-A) of Arms Act by the Thisayanvilai Police Station in Crime No. 345 of 2023. On the same day, the detenu was arrested and remanded to



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judicial custody, whereas the detention order passed nearly after one month and there is no live link between the offence and the detention order. The second ground raised by the petitioner is that the likelihood of getting bail referring a case, where bail granted, is not a similar case, for which, the accused was arrested. The third point is that the booklet was served to the detenu on 18.09.2023, i.e., on the sixth day of the detention and therefore, there is a gross-violation of the mandatory provision contemplated under Section 8(1) of the Tamil Nadu Act 14 of 1982.

2. The learned counsel for the petitioner submitted that the six adverse cases referred in the detention order, are of the year 2019, 2020 and 2022. The FIR was registered against the unknown person and later, the detenu was shown as the accused. These cases are not such serious nature, Therefore, there is non-application of mind on the part of the detaining authority.

3. The State has filed a detailed counter through the second respondent, wherein the delay in issuing the detention order being



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explained. According to the second respondent, since the detenu had six adverse cases in various stations in Tirunelveli District, it required time to collect details and prepare the paper book regarding the likelihood of getting bail. It is submitted that the case referred also relates to the offence under Sections 294(b) 353, 506(ii) IPC, wherein the Principal Sessions Court, Tirunelveli has granted bail. Hence, the likelihood and the real possibility of getting bail would arise. Regarding violation of Section 8(1) of the Tamil Nadu Act 14 of 1982, the contra view of two Division Benches of this Court has been relied upon by the learned counsel for the petitioner regarding reckoning of five days period. In this case, the petitioner was detained and was arrested and sent to judicial custody on 14.08.2023 and when he was in the prison, the detention order dated 13.09.2023 was served on the detenu on the same day in the prison at 16.55 hours. The booklet was served on him on 18.09.2023 at 11.00 a.m. The detenu had affixed his signature with time. The five days time contemplated under Section 8(1) of the Tamil Nadu Act 14 of 1982, should be construed literally and the five days time for the State must be considered as five 24 hours. If any other interpretation through the Section is applied, then the State will be shortage



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of five 24 hours. This Court is fully in agreement with the above submission.

4. This Court, on perusal of records, finds that in all six adverse cases, the petitioner has been granted bail and however one after another, he had been indulged in chain-snatching robbery and theft. His *modes operandi* has also been explained in the detention order. In the ground case, when the police was on patrol, the police were threatened when they tried to apprehend him. The nearby shop owners got terrified by the act of the detenu and they closed their shops and ran away from the place. This Court also finds that from the time of serving the detention order, the limitation of five days time under Section 8(1) of the Tamil Nadu Act 14 of 1982 has to be reckoned and the five days has to be taken into account as 5 X 24 hours. If it so taken, the booklet has been served within the time prescribed and therefore, there is no violation of Section 8(1) of the Tamil Nadu Act 14 of 1982. The Judgment of the Hon'ble Supreme Court in connection with 60 days/90 days for considering default bail under Section 167(2) Cr.P.C. may not be applicable in the cases of preventive detention, when the date of



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arrest in the ground case and the date of serving the detention order will vary and not be one and the same.

5. In such circumstances, the detention order clearly discloses the application of mind and scrutiny of the records. Hence, there is no reason to interfere with the detention order. Accordingly, this Habeas Corpus Petition is dismissed.

(G.J.,J.) (C.K.,J.)
04.03.2024

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

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3. The Inspector of Police,
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Madurai Bench of Madras High Court,
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