



H.C.P.(MD) No.1471 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.04.2024

CORAM:

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

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Nagarajan

... Petitioner

-VS-

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

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

... 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, connected with the detention order of the Respondent No.2 in No.76/BCDFGISSSV/2023, dated 11.08.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Saravanan @ Baby Saravanan,



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Son of Nagaraj, aged about 22 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
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., Saravanan @ Baby Saravanan, aged about 22 years, son of Nagaraj. The detenu has been detained by the second respondent by his order No.76/BCDFGISSSV/2023, dated 11.08.2023 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.

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.



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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 16.05.2023, and the impugned Detention order came to be passed only on 11.08.2023, 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.

4. The learned counsel for the petitioner further submitted that in respect of the co-accused, this Court, taking into consideration the long delay in passing the detention order, has allowed the Habeas Corpus Petition in H.C.P.(MD)No.1185 of 2023 by order dated 20.11.2023. Hence, on the above ground, the present impugned detention order is also liable to be set aside.

5. The learned Additional Public Prosecutor strongly opposed the habeas corpus petition by filing his counter. He would submit that



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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 and the detenu is having 10 previous cases.

6. Though it has been stated by the respondent that the detenu has 10 previous cases and collection of details has caused the delay in passing the impugned detention order, a perusal of the grounds of detention as well as the detention order passed by the detaining authority shows that the detaining authority has relied only three adverse cases. The detenu was arrested in the ground case as early as on 16.05.2023 and the detention order was passed on 11.08.2023. 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. Further, this Court has already quashed the detention order for the co-accused on the very same ground of delay in passing the detention order.



7. 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 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 it 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



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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."

8. In three case as pointed out by the counsel for the petitioner, the delay has not been satisfactorily explained, thereby vitiating invalidating the detention order.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention No.76/BCDFGISSSV/2023, dated 11.08.2023, passed by the second respondent is set aside. The detenu, viz., Saravanan @ Baby Saravanan, aged about 22 years, son of Nagaraj, 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.]
02.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Madurai Bench of Madras High Court,
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