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H.C.P.(MD) No.1494 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2024

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD)No.1494 of 2023

Robert Vincly

... Petitioner/ detenue

-Vs-

1.The Principal Secretary to the Government,
Home Prohibition and Excise Department,
Fort St.George, Secretariat, Chennai-9.

2.The Commissioner of Police,
O/o.Commissioner of Police,
Tiruchirappalli City.

3.The Inspector of Police,
Palakarai Police Station,
Trichy City,
(Crime No.700 of 2023)

4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli City.

... Respondents

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 in C.No.61/Detention/C.P.O/T.C/2023 dated 30.06.2023 and quash the same and



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consequently direct the respondents to produce the body or person of the detenue namely Robert Vincly son of Chinnappadoss aged about 22 years now detained as 'Goonda' at Central Prison, Trichy and set him at liberty forthwith.

For Petitioner : Mr.A.Mohamed Hashim

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

ORDER

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

The petitioner herein was preventively detained based on the report of the sponsoring authority and the said detention order is under challenge in this petition on the ground that there is a total non application of mind on the part of the detaining authority and there is no proximity of time between the cases against the petitioner and the detention order. Further, the Tamil version of government order issued in G.O.(D)No.89, Home Prohibition and Excise (XVI) Department, dated 12.04.2023 was not furnished to the detenue to make an effective representation.



2.A detailed counter affidavit was filed by the second respondent stating that the petitioner herein is a habitual offender, against whom three adverse cases are pending under investigation. In all the three cases, he was released on bail. Thereafter also he had engaged himself in an offence. On 25.05.2023, a complaint was received by the Palakarai Police station from one Marimuthu alleging that the petitioner herein along with other accused persons wielded a knife and demanded Rs.5,000/- to pay for his Lawyer and for consumption of liquor. When the defacto complainant resisted, the detenue herein forcibly took out Rs.1,000/- from the pocket of the complainant and tried to escape. The public gathered there tried to prevent the detenue as a result of which, he threatened the public and caused fear in their mind. Hence, the sponsoring authority thought fit to detain the detenue under Act 14 of 1982, since he has already been fallen under this scanner and his presence outside is likely to cause danger to the public peace and tranquility. After collecting the incriminating materials against the petitioner, the sponsoring authority sought for preventive detention and being satisfied with the materials, the detention order was passed on 30.06.2023. There was proximity of time and events both in respect of the offence as well as the detention order.



3.The learned Additional Public Prosecutor appearing for the respondents submitted that since all the three previous cases were of the year 2021 and 2022, particulars from the Court concerned were collected and in the course of collecting materials, there was a delay. Regarding the ground that there is no similarity between the cases to draw inference that there is a likelihood of getting bail, the learned Additional Public Prosecutor submitted that the case referred for similarity is in respect of the similar offence and the petitioner himself, who had engaged in similar offence earlier, was granted bail. Therefore, it is incorrect to say that the detaining authority has not applied his mind properly and the case cited is not similar. Regarding non furnishing of the vernacular copies of the Government Order, the learned Additional Public Prosecutor referring the judgment of the Hon'ble Supreme Court in *E.Subbulakshmi vs. State of Tamil Nadu [2017 1 SCC 757]* submitted that the Government Order was issued delegating power to the Commissioner of Police, to issue orders under Section 3(2) of the Act 1982 and it is not mandatory to supply the copies of the document, more so, the translated version of the Government Order.

4.The point for consideration is whether the detention order suffers from any illegality and whether the validity of the detention order warrants any judicial review due to any procedural defects?



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5.In this case, the detaining authority had gone into the materials placed by the sponsoring authority and was satisfied that the presence of the petitioner will be a threat to the public peace. The ground case registered on 25.05.2023, emanated from the complaint given by one Marimuthu alleging that he was threatened with dire consequences by the detainee and a sum of Rs.1,000/- was robbed from him. The detainee was arrested on the same day i.e., on 25.05.2023.

6.The delay in passing the detention order is attributed to the fact of collecting materials regarding the previous cases. As pointed out by the learned counsel for the petitioner that those three previous cases are from the concerned police station and there could not have been much delay for collecting particulars. The delay of 36 days from the date of occurrence to the date of detention order cannot be taken as a serious lapse, if the delay is properly explained. It is to be noted that Act 14 of 1982 does not prescribe any time frame for invoking detention, provided if there are materials available to the satisfaction of the detaining authority. But if there is a gap and delay, which breaches the relativity and proximity, the same has to be taken note of.

7.In this case, this Court finds that the petitioner herein, who had been on adverse notice of the third respondent police since 2021, was detained based



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on the complaint given by Marimuthu on 23.05.2023 after a period of 36 days from the date of registering this ground case. Since the delay has not been satisfactorily explained, this Court is of the view that this petition is liable to be allowed and the detention order is to be quashed.

8.In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.61/Detention/C.P.O/T.C/2023 dated 30.06.2023 passed by the second respondent is set aside. The detenu, viz., Robert Vincly son of Chinnappadoss aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.J.] & [C.K.J.]
20.02.2024

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

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Home Prohibition and Excise Department,
Fort St.George, Secretariat, Chennai-9.



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