



HCP.No.2760 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2760 of 2024

Gopi

... Petitioner/Brother of
the Detenu

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. District Collector and District Magistrate of
Kancheepuram District, Kancheepuram.
3. The Superintendent of Police,
Kancheepuram District, Kancheepuram.
4. The Superintendent of Prison,
Central Prison, Vellore.
5. The Inspector of Police,
Walajabad Police Station,
Kancheepuram 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 in connection with the order of detention passed by the second respondent dated 08.08.2024 in Rc.No.143/2024/M6-D.O.No.45/2024 against the petitioner's brother Mohan, Male, aged 26 years, S/o. Kandasamy, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	: Mr.P.Raman
For Respondents	: Mr. R.Muniyapparaj Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The preventive detention order passed by the second respondent in proceedings Rc.No.143/2024/M6-D.O.45/2024 dated 08.08.2024 is sought to be quashed in the present habeas corpus petition.

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.



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3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 03.06.2024 and thereafter, the detention order came to be passed on 08.08.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. In the case of '**Sushanta Kumar Banik Vs. State of Tripura**', reported in '**2022 LiveLaw (SC) 813**', when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of detention order and the actual arrest, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped in arresting the detenu. 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



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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.”

6. Drawing inspiration from the judgment in ***Sushanta Kumar Banik's case***, a co-ordinate Bench of this Court in the case of '***Gomathi Vs. Principal Secretary to Government and Others***', reported in '***2023 SCC OnLine Mad 6332***', had held that when there is an inordinate delay from the date of arrest/date of proposal till the order of detention, the live and proximate link between them would also stand snapped and thereby, had quashed the detention order on this ground.



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7. In yet another case i.e., in '*Nagaraj Vs. State of Tamil Nadu*', reported in '**(2018) 3 MWN (Cri) 428**', this Court had held that the delay of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Hence, in view of the unexplained and inordinate delay in passing the order of detention, after the arrest of the detenu, the detention order in the present case, is liable to be quashed.

8. Further, the learned Counsel for the petitioner would submit that the Government Order in G.O.(D).No.195, Home, Prohibition and Excise (XVI) Department dated 12.07.2024 enclosed at page nos.79-81 in volume-II of the Booklet served on the detenue has not been translated in the language known to the detenue. Thus, the detenu is deprived from making effective representation and that the Detention Order passed by the Detaining Authority is vitiated.

9. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in '*Powanammal Vs. State of Tamil Nadu*' reported



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in '(1999) 2 SCC 413'. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 {as in SCC journal} as follows:

“9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case,



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the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

..... **16.***For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed.”*

10. In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

11. Accordingly, the detention order passed by the 2nd respondent, in proceedings Rc.No.143/2024/M6-D.O.45/2024 dated 08.08.2024 is



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hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz.,
Mohan, aged 26 years, S/o.Kandasamy, confined at Central Prison, Vellore
is directed to be set at liberty forthwith unless he is required in connection
with any other case.

[S.M.S., J.] [M.J.R., J.]
03.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. District Collector and District Magistrate of
Kancheepuram District, Kancheepuram.
4. The Superintendent of Police,
Kancheepuram District, Kancheepuram.
5. The Superintendent of Prison,
Central Prison, Vellore.
6. The Inspector of Police,
Walajabad Police Station,
Kancheepuram District.
7. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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