



HCP(MD)No.1192 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.12.2022**

CORAM

THE HON'BLE MR JUSTICE M.S. RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1192 of 2022

Radhika

... Petitioner /
Sister of the Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 9.

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

3.Inspector of Prison,
All Women Police Station,
Pattukottai,
Thanjavur District.

4.The Superintendent,
Central Prison,
Tiruchirappalli District.

... Respondents



HCP(MD)No.1192 of 2022

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.69/2022 dated 19.06.2022 on the file of the 2nd Respondent and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Baskar @ Rengadurai, son of Panneerselvam, aged about 40 years, now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.M.Pitchai Muthu

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH,J.

The petitioner is the sister of the detenu viz., Baskar @ Rengadurai , son of Panneerselvam, aged about 40 years. The detenu has been detained by the second respondent by his order in Detention Order P.D.No.69/2022 dated 19.06.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under



HCP(MD)No.1192 of 2022

challenge in this Habeas Corpus Petition.

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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, the learned counsel appearing for the petitioner mainly urged two grounds questioning the validity of the detention. The first ground that was urged by the learned counsel for the petitioner is that the detenu has already been acquitted from the criminal case in S.C.No.53/2022 through judgment and order passed by the POCSO Court, Thanjavur on 11.11.2022. Hence, according to the learned petitioner, the detention order also must fail. The second ground that was urged by the learned counsel for the petitioner is that the detaining authority, after being aware of the fact that the bail application filed by the detenu was dismissed, came to a conclusion that there is likelihood of the detenu coming out on bail, based on the order passed in Cr.M.P.No.377/2020 dated 17.09.2020. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining



authority cannot be considered to be a similar case.

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4. Insofar as the first ground is concerned, the same was vehemently opposed by the learned Additional Public Prosecutor. He further submitted that even if the detenu has been acquitted from the criminal case, that will not have any impact on the detention order since the consideration for passing the detention order was completely different. To substantiate the submission, the learned Additional Public Prosecutor relied upon the judgements of Apex Court in

a) *Mohd. Salim Khan v. Shri C.C.Bose and another*, reported in 1972(2) SCC 607;

b) *Nanhey v. State of Uttar Pradesh*, reported in 1973 (3) SCC 317; and

c) *Golam Hussain alias Gama v. The Commissioner of Police, Calcutta and other*, reported in 1974(4) SCC 530.

5. In reply to the above submission, learned counsel for the petitioner brought to our notice the judgment of the Apex Court in *Haradhan Saha and another v. The State of West Bengal and others*, reported in AIR 1974



SC 2154 and the learned counsel for the petitioner specifically relied upon the following passages from the judgment.

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of W.B. [(1972) 2 SCC 550 : 1972 SCC (Cri) 888] , Ashim Kumar Ray v. State of W.B. [(1973) 4 SCC 76 : 1973 SCC (Cri) 723] ; Abdul Aziz v. District



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HCP(MD)No.1192 of 2022

Magistrate, Burdwan [(1973) 1 SCC 301 : 1973 SCC (Cri) 321] and DebuMahato v. State of W.B. [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U.P. [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention



order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

6. The learned counsel for the petitioner submitted that the larger Bench of the Apex Court had formulated broadly 5 principles while dealing with cases of this nature and the 5th principle that was prescribed in the above judgment was that the order of detention is based on a reasonable prognosis of the future behaviour of the person based on his past conduct in the light of the surrounding situation. In the present case, the allegation that was made against the detenu confined itself to a past conduct and the detenu has also been acquitted from the charge. The nature of allegation was such that there cannot be any prognosis that the detenu will continue to commit such an offence even in future. Such an assumption cannot be made on the facts of the present case.

7. We have carefully gone through the detention order and considered the submissions made on either side.



8. Insofar as the first ground is concerned, a careful reading of judgments that were cited on either side makes it very clear that an order of preventive detention can be made with or without prosecution and in anticipation or even after the discharge of a person from a criminal case. Insofar as the proceeding against the accused in a criminal case, it falls within the ambit of punitive branch of criminal law based on the past conduct. Insofar as the preventive detention is concerned it is more in the nature of protecting the community from a future injury that can be caused by the detenu. In the present case, the detenu was detained under the Act for sexual offence. It is true that the detenu has also been acquitted from the charges since the victim girl turned hostile in this case. Hence, the judgment that was passed by the Court below was not based on merits and it was mainly based on the fact that there was no evidence available against the detenu. In view of the same, the detention order *per se* cannot be held to be bad on the ground that the detenu has been discharged from the criminal case.

9. Insofar as the second ground is concerned, the detaining authority has taken into consideration the fact that the bail application filed by the detenu was dismissed. However, the detaining authority relied upon the



HCP(MD)No.1192 of 2022

order passed in Cr.M.P.377/2020 to come to a conclusion that there is likelihood of the detenu being let out on bail. We have carefully gone through the said order and it is seen that the bail was granted in that case since the final report was not filed within the statutory period and hence, statutory bail was granted under Section 167(2) of the Act. Obviously, the order that was relied upon by the detaining authority does not pertain to a similar case and hence, there is non application of mind on the part of the detaining authority. On this ground, we are inclined to interfere with the detention order.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order P.D.No.69/2022 dated 19.06.2022 passed by the second respondent is set aside. The detenu, viz., Baskar @ Rengadurai son of Panneerselvam, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

**(M.S.R.,J.) & (N.A.V.,J.)
01.12.2022**

Index : Yes/No



HCP(MD)No.1192 of 2022

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HCP(MD)No.1192 of 2022

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