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H.C.P.No.80 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR. JUSTICE R.SAKTHIVEL**

H.C.P.NO.80 OF 2023

Sangeetha

.. Petitioner

VS.

1.The Secretary to the Government
Home, Prohibition and Excise Dept.,
Chennai – 600 009.

2.The Commissioner of Police
Tambaram City,
Tambaram.

3.The Superintendent of Prison
District Prison – II
Chengalpattu.

4.The Inspector of Police
Central Crime Branch
Tambaram Police Commissionerate

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to direct the respondents to produce the body of the detenu Mr.IKOT Maharajan, Male, Age 29



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years S/o.Murugesan, who is detained in District Prison, Chengalpattu, before this Court and pass an order to call for the records of detention order passed by the second respondent in No.202/B.C.D.F.G.I.S.S.S.V/2022 dated 22.11.2022 against the petitioner's husband Mr.IKOT Maharajan, S/o. Murugesan and set aside the same and set the detenu at liberty.

For Petitioner : Mr.T.Perinbanathan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the matter came up for admission on 20.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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and

G.K.JLANTHIRAIYAN, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 02.01.2023 *inter alia* assailing a detention order dated 22.11.2022 bearing reference BCDIGISSSV No.202/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The wife of the detenu is the petitioner.

3. Mr.R.Rafi Babu, learned counsel on record for habeas corpus petitioner is before us.

4. The aforesaid detention order has been made on the ^{premises} basis ^{that} that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Internal traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

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mk

5. The detention order has been assailed *inter alia* on the ground that the detention order has been made automatically, mechanically, perfunctorily and against procedural safeguards.

6. *Prima facie* case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. Mr.R.Muniyappanji, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.]

[G.K.H.]

20.01.2023

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2. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.446 of 2022 on the file of Maraimalai Nagar Police Station (CCB, Tambaram) for alleged offences under Sections 406, 420, 294(b) and 120(B) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

3. Mr. T. Perinbanathan, learned counsel representing the counsel on record for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. In the support affidavit, very many points/grounds have been urged/raised but one point projected in the arguments in the hearing finds favour with us and therefore we would set out this one point *infra* and refrain from examining the other points in the instant legal drill on hand.



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5.The lone point urged by learned counsel for petitioner is that there is infraction/violation of Section 8(1) of Act 14 of 1982 as the grounds on which the detention order has been made has not been communicated to the detenu within five days from the date of detention (To be noted, the grounds have been served to the detenu by the prison authorities in the form of a booklet and therefore the same shall be referred to as 'said booklet').



Adverting to the aforementioned provision of law, learned counsel submitted that the date of impugned preventive detention order is 22.11.2022, it was served on the detenu on 23.11.2022 (to be noted seal in this regard as served on the detenu has been scanned and reproduced supra) but the 'grounds on which the impugned preventive detention order

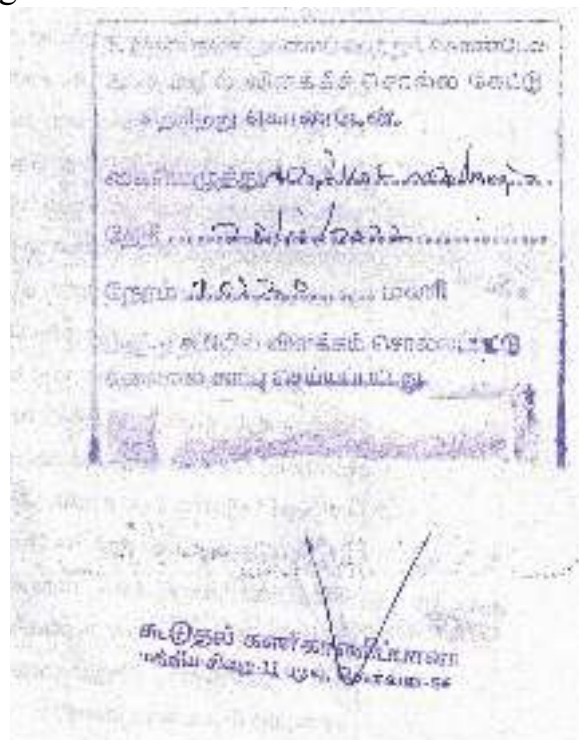


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has been made' was served on the detenu in the form of said booklet only on 28.11.2022.

6.Learned counsel for HCP petitioner submits that this is a clear infraction of the statutory requirement put in place by Section 8(1) of Act 14 of 1982 and such infraction of a statutorily imperative requirement is fatal qua impugned preventive detention order is learned counsel's further say. To be noted 23.11.2022 is the date of formal arrest (detention) pursuant to impugned preventive detention order. We perused the papers and a scanned reproduction of a typical page containing date regarding date of supply of grounds to detenu is as follows:





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7. One point that arises for consideration is whether the date

of detention should be included or excluded in computing this 5 days. To be noted, the date of detention pursuant to impugned preventive detention order in the case on hand is 23.11.2022 as already alluded to supra. We are of the view that the date of detention has to be included for computing this 5 days and the reason for us to say so unhesitatingly is the ratio / principle laid down by Hon'ble Supreme Court in ***Kapil Wadhawan's*** case being ***Enforcement Directorate, Government of India vs. Kapil Wadhawan and another*** vide order dated 27.03.2023 in CrI.A.Nos.701-702 of 2020. While answering a reference on the question as to whether date of remand is to be excluded or included for computing 60/90 days qua section 167(2) Cr.P.C. default bail, Hon'ble Supreme Court vide a detailed order declared that date of remand has to be included for computing 60/90 days. We are conscious that this ***Kapil Wadhawan*** pertains to remand but we are of the view that inspiration can be drawn from this case law, as remand is also curtailment of liberty as much as and akin to preventive detention order being curtailment of liberty though former is followed by trial for an alleged offence said to have been committed unlike latter which is not followed by trial and is for an offence which the detaining authority considers to be likely to be committed by the detainee. In ***Kapil***



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Wadhawan's case, the relevant paragraphs are paragraphs 6 and 50 which

read as follows:

'6. The core issue that arises for consideration is whether the date of remand is to be included or excluded, for considering a claim for default bail, when computing the 60/90 day period as contemplated in proviso (a) of [Section 167\(2\)](#) of the [Cr.P.C.](#) The moot question has been considered by this Court in various cases, but there is a divergence of opinion on how the stipulated period, for the right of default bail, accruing to the accused, is to be computed. Some judgments have favoured the exclusion of date of remand, while a contrary view is taken in other cases.

50. Since there exists vacuum in the application and details of [Section 167](#) Cr.P.C., we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the charge sheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight,



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onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the charge sheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the charge sheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the charge sheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under [Section 167 Cr.P.C.](#) ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under [Section 167 Cr.P.C.](#) In cases where the charge sheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.'

8.The aforementioned ratio which has been laid down by



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Hon'ble Supreme Court speaks for itself very eloquently. It is very clear that the date of detention has to be included. This means that 'not later than five days' expression occurring under Section 8(1) of Act 14 of 1982 in the case on hand would mean that it cannot be later than 27.11.2022. In the case on hand, the grounds on which the impugned preventive detention order was made was admittedly served on the detenu only on 23.11.2022. Therefore, there is no difficulty in coming to the conclusion that there is infraction of Section 8(1) of Act 14 of 1982.

9.The impugned detention order is dated 22.11.2022 and the same was served on the detenu on 23.11.2022 whereas the grounds on which the impugned preventive detention order was made was communicated to the detenu only on 28.11.2022 which is admittedly later than 5 days from the date of detention. To be noted, date of detention i.e., formal arrest is on 23.11.2022 as the detenu is in any way incarcerated from 09.11.2022, in other words, date of service of impugned preventive detention order is on the date of formal arrest pursuant to the impugned preventive detention order.

10.We remind ourselves that dealing with infraction of



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Section 8(1) of Act 14 of 1982, this Bench in the case of **M.Shylaja**

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Vs.The Additional Chief Secretary to Government and others reported in **2023/MHC/193** has held that such infraction would lead to dislodgement of impugned preventive detention order.

11.In the light of narrative, discussion and dispositive reasoning supra, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in the case on hand.

12.Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 22.11.2022 bearing reference BCDFGISSSV No.202/2022 made by the second respondent is set aside and the detenu Mr.IKOT Maharajan, aged 29 years, son of Thiru.Murugesan is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S., J.)

(R.S.V., J.)

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Index : Yes / No

Neutral Citation : Yes / No

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P.S: Registry to forthwith communicate this order to Jail authorities in District Prison – II, Chengalpattu.



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To

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