



H.C.P.No.207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.207 of 2023

A.Mahabunisha

W/o.Abdul Rahuman

.. Petitioner / Wife of the detenu

Vs.

1.The State of Tamil Nadu

Rep. By its Secretary to Government
Home, Prohibition & Excise Department
Fort St.Goerge,
Chennai – 600 009.

2.The Commissioner of Police/Detaining Authority

Office of the Commissioner of Police
Coimbatore City
Coimbatore – 641 018.

3.The Superintendent

Central Prison
Coimbatore – 641 018.

4.The Inspector of Police

B-3, Variety Hall Road P.S.,
In Cr.No.182 of 2022
Coimbatore City.

.. Respondents

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Prayer:

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu by name A.Abdul Rahuman @ Naveeth @ Naveen, son of Anvar Batcha, aged 30 years, presently confined at Central Prison, Coimbatore, before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order and Grounds of detention order Tamil and English dated 07.11.2022, vide C.No.67/G/IS/2022 passed by the second respondent and quash the same.

For Petitioner	:	Dr.S.Manoharan for Ms.S.K.Akshaya
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 10.02.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 01.02.2023 *inter alia* assailing a detention order dated 07.11.2022 bearing reference C.No.67/G/IS/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Ms.K.Akshaya, learned counsel representing the counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 153, 285 and 435 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.182 of 2022 on the file of B-3 Variety Hall Road

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Police Station which was subsequently, altered into Sections 307 and 436 of IPC and Section 3 of Explosives Substances Act, 1908. Thereafter, again it was altered into Sections 153(A), 307, 436 of IPC and Section 3 of Explosive Substances Act, 1908.

4. The aforementioned detention order has been made on the premise 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, Immoral 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].

5. The detention order has been assailed *inter alia* on the ground that the Detaining Authority has failed to provide the booklet and documents to the detenu in time which prevented the detenu to make an effective representation within time.

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6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

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


[M.S.J.]


[M.N.K.J.]
10.02.2023

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2.Dr.S.Manoharan, learned counsel representing Ms.S.K.Akshaya, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3.In the support affidavit several points have been raised/urged but in the hearing Dr.S.Manoharan, learned counsel raised three points and they are as follows:

(i) Live and proximate link between purpose of detention and grounds of detention had snapped as the alleged occurrence is on 22.09.2022, arrest was on 30.09.2022 but the impugned preventive detention order has been made only on 07.11.2022. To be noted, this point has been raised as Ground (O) in the support affidavit and the same reads as follows:

'(O) The 2nd Respondent failed to consider that the detenue was arrested in the ground case 30.09.2022 and he was remanded to judicial custody on the very same day. However the impugned



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detention order was passed only on 07.11.2022. Thus, there is a considerable delay in clamping the detention order against my husband. The Hon'ble Supreme Court in a recent case in Sushananta Kumar Banik -Vs- State of Tirubura and other reported in CDJ 2022 SC 1064 held that, unreasonable delay between the date of the order of the detention and actual date of arrest of the detenue would make invalid the detention order since "Live and proximate link" is snapped. As such the detention order passed by the 2nd respondent is illegal and liable to be quashed.'

(ii) Subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail is impaired as the detaining authority has relied on bail order dated 09.12.2016 made in CrI.M.P.Nos.3149 & 3150 of 2016 [**Nagaraj vs. Inspector of Police**] on the file of learned Principal District and Sessions Judge, Coimbatore. **Nagaraj** case is dissimilar as Section 307 is not one of the charges in **Nagaraj's** case.



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(iii) In the light of the dates projected for the first point qua live and proximate link, it is not a case for public order and it at best perambulates only within law and order perimeter.

4.Learned State Additional Public Prosecutor submits to the contrary and his submissions are as follows:

(i) As regards ground (O) raised in the support affidavit, the same has been met in paragraph (O) of the Counter Affidavit and the same reads as follows:

'(O) Regarding the averment of the petitioner in ground 'O' of the affidavit that, there was a delay in passing the Detention Order, I respectfully submit that, there is no time limit to detain an anti-social element under Tamil Nadu Act 14 of 1982. Further in the interim period the Sponsoring Authority collected relevant records from the concerned courts. After collecting the records, the Sponsoring Authority submitted the proposal dated 03.11.2022 and it was



forwarded to the Detaining Authority by the Deputy Commissioner of Police, North, Coimbatore city on the same day. After perusing the connected documents and arriving at the subjective satisfaction, the Detention Order was passed on 07.11.2022. Hence, the issue of the delay does not arise.'

The above explains the time consumed is learned prosecutor's say.

(ii) As regards similar case i.e., Nagaraj case, learned prosecutor submitted that the offences are broadly comparable.

(iii) As regards public order, learned prosecutor submitted that the matter was tested as on the date of the impugned preventive detention order.

5. We carefully considered the rival submissions. We now proceed to set out the discussion and dispositive reasoning on the aforementioned three points.

(i) As regards live and proximate link between grounds of detention and purpose of detention, the lead case is Banik, being ***Sushanta Kumar***



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Banik Vs. State of Tripura and Others reported in **2022 SCC OnLine SC**

1333, relevant paragraphs are paragraphs 21 and 22 and the same reads as follows:

'21.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 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.

22.In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner &



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though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.'

To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/334**, **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/733**, **Sangeetha Vs. The Secretary to the Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1110**, **N.Anitha Vs. The Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and a series of other orders in HCP cases.

In the case on hand, it is also to be noticed that the detenu was incarcerated and was in judicial custody on the date of the impugned preventive detention order and therefore, live and proximate link theory gets



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further buttressed.

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Further, a careful reading of the impugned preventive detention order shows that there is a complete leap in chronology as between 30.09.2022 and 07.11.2022 i.e., the Date of Arrest and the Date of impugned preventive detention order. To be noted, the Date of Occurrence is 22.09.2022. Therefore, the live and proximate link between grounds of detention and purpose of detention has snapped point is sustained.

(ii) Though it has been repeatedly held that when one point cuts ice qua challenge to a preventive detention order, it is not necessary to embark upon the exercise of examining the other points, as the other two points have been raised in the hearing, considering the facts and circumstances of the case on hand, we deem it appropriate to deal with the same. This takes us to the second point i.e., comparison with *Nagaraj* case. A careful perusal of the bail order in *Nagaraj* case shows that it does not pertain to Section 307 IPC whereas the ground case pertains to an alleged charge qua Section 307 IPC. The cases are dissimilar and therefore, the subjective satisfaction



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is impaired. This takes this Court to the third point namely, Public Order.

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(iii) As regards Public Order, this Court reminds itself of the celebrated locus classicus of habeas jurisprudence namely, **Ram Manohar Lohia** case law, reported in **AIR 1966 SC 740**, relevant paragraphs are paragraphs 54 and 55 and the same reads as follows:

'54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they



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were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55.It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules. '



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6. Before we proceed further, we also remind ourselves that in habeas jurisprudence, habeas corpus writ being a high prerogative writ, the primary question which a habeas corpus Court would address itself to is as to whether the normal law and order machinery is good enough to contain the situation. In the case on hand, if the three concentric circles doctrine is applied, we find that the detenu was incarcerated in judicial custody and the law and order machinery was good enough to oppose a bail application and the subjective satisfaction that there is possibility of impairment to public order at such a distant point of time i.e., between 22.09.2022 and 07.11.2022 all add up to show that the matter has not even gravitated to the second smaller concentric circle of public order. To be noted, there is nothing on record to show that the normal law and order machinery was not good enough to contain the situation. We also notice that the impugned preventive detention order is predicated on a solitary offence. This means that the third point also is sustained.

7. Thus, all the three points canvassed before us find favoured with us.



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Therefore, there is no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.11.2022 bearing reference C.No.67/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.A.Abdul Rahuman @ Naveeth @ Naveen, son of Thiru.Anvar Batcha, aged 30 years is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
19.06.2023

Index : Yes
Speaking order
Neutral Citation : Yes

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**P.S: Registry to forthwith communicate this order to
Jail authorities in Central Prison, Coimbatore.**

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Home, Prohibition & Excise Department
The State of Tamil Nadu
Fort St.Goerge,
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M.SUNDAR, J.
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Dated : 19.06.2023

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