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H.C.P.No.1089 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1089 of 2022

Amirtham
W/o.Ganesh

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The District Collector and District Magistrate
Office of the District Collector
Coimbatore.
3. The Superintendent of Police
Special Prison for Women
Central Prison
Coimbatore.
4. The Superintendent of Police
Superintendent of Police Office
Coimbatore.

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5. The Inspector of Police
Cyber Crime Police Station
Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in relating to the petitioner's daughter detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 23.02.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.06/Cyber Crime Offender/2022/E1, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's daughter namely Subbulakshmi @ Rowdy Baby Surya, W/o.Balavinayagam, aged 35 years before this Hon'ble High Court and set the petitioner's daughter at liberty from detention, now the petitioner's daughter detained at Special Prison for Women, Central Prison, Coimbatore.

For Petitioner	:	Mr.M.Mohamed Saifulla representing Mr.D.Balaji
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity and convenience] has been filed in this Court on 07.06.2022 assailing a 'detention order dated 23.02.2022 bearing reference Cr.M.P.No.06/Cyber Law/Offender/2022/E1' [hereinafter 'impugned



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detention order' for the sake of convenience and clarity] made by the second respondent being jurisdictional District Collector. Impugned detention order has been made on the premise that the detenu is a 'Cyber Law Offender' within the meaning of Section 2(bb) 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].

2. There are two adverse cases and one ground case.

3. The ground case is for alleged offences under Sections 294(b), 354(A), 354(D), 509 read with 109 IPC, 66(D), 67 of Information Technology Act, 2000 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 in Crime No.25 of 2021 on the file of Coimbatore District Cyber Crime Police Station. The Additional Mahila Court, Coimbatore is in seizin of this case.



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4. Owing to legal perimeter of a habeas corpus petition qua merits of ground / adverse cases and nature of grounds on which the impugned detention order is being assailed before us, it is not necessary to dilate further on facts. To put it differently it is not necessary to be detained by facts.

5. Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for habeas corpus petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the four respondents are before us.

6. To be noted, fifth respondent who is jurisdictional Inspector of Police is the Sponsoring Authority.

7. Notwithstanding very many grounds raised in the affidavit in support of HCP, learned counsel for petitioner predicated, posited and projected his arguments before us on three points. The three points together with discussion and dispositive reasoning for the same are as follows:

(i) The first point is delay in making the impugned



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detention order. To put it in legal parlance, 'live and proximate link' between the grounds of detention and purpose of detention has snapped. This has been articulated by habeas corpus petitioner in ground (F) of the support affidavit which reads as follows:

'F. The detenue was arrested in the ground case on 04.01.2022 and remanded to the custody on the very same day but the detention order came to be passed only on 23.02.2022 and it is delay of 19 days which is not a considerable belated and there is no explanation on the part of the detaining authority.'

This ground (F) has been met in the counter affidavit in subparagraph (d) of paragraph No.3 which reads as follows:

'd). It is submitted that the delay between the date of arrest (04.01.2022) and the date of Detention Order (23.02.2022) is not a major delay to defeat the subjective satisfaction arrived in this case from the materials available in the ground case. Hence the Detention Order is not liable to be quashed.'

A careful perusal of 'live and proximate link' point as raised by habeas corpus petitioner and the manner in which the same has been explained by the State leaves us with the considered view



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that there is nothing to demonstrate that the live and proximate link between the grounds of detention and purpose of detention have not snapped. In this regard, we remind ourselves of recent judgment of Hon'ble Supreme Court in ***Sushanta Kumar Banik Vs. State of Tripura & others*** reported in ***2022 LiveLaw (SC) 813***. ***Banik*** case law is one where there was an arrest under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PITNDPS Act' for the sake of brevity] in Tirupura. After referring to the proposal submitted by the jurisdictional Superintendent of Police and the trajectory the matter took, Hon'ble Supreme Court held that when the question as to whether the delay is unreasonable and more particularly, when the question as to whether the delay stands unexplained depends on the facts and circumstances of each case. To be noted, in ***Banik*** case law, Hon'ble Supreme Court held that the delay remains unexplained. In the case on hand, in the light of ground (F) articulated in the affidavit and in the light of the reply by the State made in paragraph 3 of the



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counter affidavit we are left with the considered view that 'live and proximate link' between the grounds and purpose of detention has snapped point should have been explained with clarity and specificity. This means that snapping of live and proximate link point projected as delay is unexplained but as it does not come across as 'unreasonable' delay owing to facts and circumstances of case we hold that this point in this case does not aid the petitioner and move on to the next two points canvassed / urged before us.

(ii) The next ground turns on providing the orders of extension of remand. As already alluded to supra, the detenue was remanded to judicial custody in the ground case on 04.01.2022. Thereafter, there have been as many as three extensions of remand on 12.01.2022, 25.01.2022 and 08.02.2022. This has been not only noticed but also neatly captured by the Detaining Authority (second respondent) in the impugned detention order and relevant part of detention order reads as follows:



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'In this case, and were produced before the Judicial Magistrate, Additional Mahila Court, Coimbatore along with the seized properties on 04.01.2022 and as per the order of the Court. was sent to judicial custody at Special Prison for Women, Central Prison, Coimbatore till 12.01.2022 and was sent to judicial custody at Sub Jail, Pollachi till 12.01.2022. Thereafter, was produced before the Judicial Magistrate, Additional Mahila Court, Coimbatore on 12.01.2022 through Video Conference and her judicial remand was extended till 25.01.2022. Thereafter, was produced before the Judicial Magistrate, Additional Mahila Court, Coimbatore on 25.01.2022 through Video Conference and her judicial remand was extended till 08.02.2022. Further she and her judicial remand has been extended upto 22.02.2022. Now she is in judicial custody at Special Prison for Women, Central Prison, Coimbatore. This case is under investigation.'

The grounds of detention is communicated to the detainee who is incarcerated has been placed before us. This is referred to as 'booklet' for the sake of convenience. A careful perusal of this booklet makes it clear that three successive orders of extension



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of remand made on 12.01.2022, 25.01.2022 and 08.02.2022 have not been annexed in the grounds though the same has been clearly referred to in the impugned detention order. This in our considered view certainly hampers the rights of the detainee to make an effective representation which is a constitutional guarantee ingrained in sub-clause (5) of Article 22 of Constitution of India. Therefore, we hold that this point also enures to the benefit of the petitioner in the petitioner's campaign against the detention order.

(iii) The third point turns on imminent possibility of the detainee being enlarged on bail. For this aspect of the matter, the impugned detention order relies on what is referred to as 'similar case'. As regards similar case, relevant portions of the grounds of detention read as follows:

'..... In the similar case which was registered in Virudhunagar District Cyber Crime Police Station Cr.No.04/2021 u/s 354(A) IPC and 67, 67(A) of Information Technology Act, 2000 r/w 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, condition bail was granted to Veeraputhiran @ Viji (26) S/o.Veeraputhiran vide



C.M.P.No.1883/2021 dated 22.07.2021 by the Court of Judicial Magistrate-II of Sattur, Virudhunagar District and he was enlarged on bail. Hence there is a real possibility

A careful perusal of similar case, wherein the bail petition itself has been annexed in pages 155 onwards of the booklet (to be noted, the bail order is annexed at pages 162 and 163 of the booklet) makes it clear that the case of Veeraputhiran on the file of Judicial Magistrate No.II, Sattur (Virudhunagar District), it is not one under Sections 509 read with 109 of 'Indian Penal Code' [IPC]. To be noted, Section 509 pertains to Word, gesture or act intended to insult the modesty of a woman and Section 109 is abetment of the same.

8. Considering the facts and circumstances of the case it is clear that as regards similar case it is a comparison between Apples and Oranges or Chalk and Cheese. Therefore, the subjective satisfaction qua imminent possibility of the detainee being enlarged on bail has been arrived at by embarking upon the exercise which may be a comparison of Apples and



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Oranges. The sequitur is, this point also enures to the benefit of the habeas corpus petitioner.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.02.2022 bearing reference Cr.M.P.No.06/Cyber Law Offender/2022/E1 made by the second respondent is set aside and the detinue Tmt.Subbulakshmi @ Rowdy Baby Surya, Wife of Balavinayagam is directed to set at liberty forthwith, if not required in connection with any other case / cases.

10. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

30.01.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

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and

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M.NIRMAL KUMAR, J.,

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To

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6. The Public Prosecutor
High Court, Madras.

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