



HCP No.1123 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.1123 of 2022

Santhavel @ Vellai

.. Petitioner

-vs-

- 1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Habeas Corpus to call for the records in
connection with the order of detention passed by the second



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respondent dated 08.06.2022 in D.O.No.63/2022-C2 Petitioner / Detenu Santhavel @ Vellai, male, aged 36 years, S/o. Ramu, 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.M.Mohamed Saifulla
for 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' ('HCP' for the sake of convenience and clarity) has been filed in this Court on 16.06.2022 by the detenu himself assailing a detention order dated 08.06.2022 bearing D.O.No.63/2022-C2 made by the second respondent (jurisdictional District Collector). The 'detention order' shall hereinafter be referred to as 'impugned D.O.' and the 'second respondent/ detaining authority' shall hereinafter be referred to as 'D.A.' for the sake of convenience and clarity. To be noted, the fifth respondent, who is the jurisdictional Inspector of Police, is the



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sponsoring authority.

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

3. Owing to nature of the grounds on which the impugned D.O. has been assailed and also the legal perimeter of a HCP *qua* a detention order under '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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity], we deem it appropriate to give only a thumb nail sketch of facts. It will suffice to say that there is one adverse case and a ground case. The ground case is Crime No.100 of 2022 for alleged offences qua Sections 294(b), 341, 324, 307 IPC r/w Section 3(1) of Prevention of Damage to Public Property Act, 1984. This is captured in sub-paragraph (d) of paragraph 3 of the grounds of detention, which reads as follows:

'3(d).Later the Inspector of Police, Vandavasi Circle took up the case for investigation, in ground



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case in Vandavasi South Police Station Cr.No.100/2022 u/s.294(b), 341, 324, 307 IPC r/w Sec 3(1) of Prevention of Damage to Public Property Act, 1984 and the case property 1)some broken pieces of lorry side glass bearing registration number TN-12-AM-1113 was seized under a cover of mahazar at near speed breaker at near Government School, Ammaiyampattu Village, Vandavasi to Arni Road in the presence of two independent witnesses: 1)Thiru.Kanniyappan (Age 59) S/o.Singaram, No.50, Selvavinayagar Kovil Street, Ammaiyampattu Village, Vandavasi Taluk, Tiruvannamalai District and 2)Thiru.Vijay (Age 32) S/o Sakthi, 2nd Cross Street, Mummuni Colony, Vandavasi Taluk, Tiruvannamalai District on 15.04.2022 at 06.30 hours. Later the Inspector of Police enquired and recorded their statements of the above two independent witnesses on 15.04.2022. The above case property was handed over to the Hon'ble Judicial Magistrate Court, Vandavasi under form 91 numbered as



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C.P.No.42/2022, Item II, dated: 26.04.2022.'

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4. Suffice to say that the aforementioned extract from the grounds of detention is tell-tale qua facts in captioned HCP. We do not propose to be detained by facts or in other words we do not propose to dilate further on facts for the reasons already alluded to supra.

5. Notwithstanding very many averments made in the affidavit filed in support of captioned HCP, learned counsel for petitioner predicated his campaign against the impugned D.O. on three points. These three points viewed in the light of the case file and the submissions of the learned counsel for petitioner and learned Additional Public Prosecutor find favour with us. The three points, discussion on the same and dispositive reasoning are as follows:

5.1 The first point is delay in making the D.O. Though it is projected as 'delay in making the D.O.', in legal parlance, it is 'live and proximate link between the grounds and purpose of detention having snapped'. Learned counsel for petitioner submits that the detenu was remanded to judicial custody in the ground case on 19.04.2022 and the impugned D.O. was made on 08.06.2022, 50



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days later and therefore the live and proximity link between the grounds and purpose of detention had snapped. This point has been raised by the detenu in paragraph 6 of the support affidavit which reads as follows:

'6.The petitioner submits that there is delay in passing the detention order that the detenue arrested on 19.04.2022, the detention order passed on 08.06.2022.'

5.2 The aforementioned paragraph 6 has been met by State in paragraph 12 of the counter affidavit which reads as follows:

'12. I submit that the averments in Para 6 of the grounds of the affidavit, it is not correct to state that it is not correct to state that the it is not correct to state that there is delay of 50 days in passing the detention order. Further, it cannot be contended that due to delay, the detention order is liable to be set aside. Further, T.N.Act 14/1982 does not prescribe any time limit for passing the detention order. And no need of adverse case even a single case in enough to pass the detention order as per Tamil Nadu Act of 14/1982.'

5.3 On a careful perusal of the impugned D.O. and more



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particularly paragraph 12 of the same, we have no hesitation in coming to the conclusion that the live and proximate link between grounds and purpose of detention having snapped argument remains unanswered and therefore unexplained. In this regard, we respectfully follow ***Sushanta Kumar Banik Vs. State of Tripura & others*** reported in ***2022 LiveLaw (SC) 813 : 2022 SCC Online SC 1333*** case law. To be noted, in ***Banik*** case, the facts are that the ground case is under 'PIT NDPS Act' ('Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988'), after considering the proposal and after considering the delay in making the detention order *qua* the ground case, Honourable Supreme Court held that the question whether the delay is unreasonable and as to whether it stands unexplained depends on facts and circumstances of each case. In the facts and circumstances of the case on hand, a careful perusal of the point that has been raised by the petitioner and the manner in which it has been met by the State leaves us with the considered view that the time consumed between the date of remand and the date of impugned D.O. remains unexplained (50 days). We have no hesitation in coming to the conclusion that the delay remains unexplained. Therefore, this first point i.e., first ground of challenge finds favour with us.



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6. The second point turns on imminent possibility of detenu being enlarged on bail. The D.A., for the purpose of arriving at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail, has relied on another case in Crime No.72 of 2022, which has been articulated in paragraph 5 of impugned D.O. and the same reads as follows:

'5.... Further I am also aware that in a similar case registered in Cheyyar Police Station Cr.No.72/2022 u/s 341, 294(b), 332, 307 IPC against Thiru. Chandru S/o. Dhinakaran, the bail was granted by the Hon'ble Tiruvannamalai Principal District and Sessions Court in Cr.M.P.No.477/2022, dated : 18.03.2022. Hence I infer it is very likely of him...'

6.1 Learned counsel for petitioner submitted that in the similar case, there is no allegation of offence under 'Prevention of Damage to Public Property Act, 1984' ('PPD Act' for the sake of convenience). This position is factually correct, however we notice a more serious aspect of the matter. The grounds of detention are supplied to the detenu in the form of a 'book' and for convenience, it



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is referred to as 'booklet'. In the booklet, as regards similar case, while reference in the impugned D.O. is to Cr.M.P.No.477 of 2022 and order dated 18.03.2022 on the file of Principal District and Sessions Judge, Tiruvannamalai, an order dated 21.03.2022 in Cr.M.P.No.705 of 2022 on the file of the same Court has been annexed at Page No.99 of the booklet. Therefore, the second point finds favour with us for more than one reason. The first reason is cases not being similar, which is akin to comparison of apples and oranges and the second reason is, the similar case referred to in the grounds of detention and a copy of similar case number provided to the detenu as part of the grounds of detention (booklet) are different.

7. The third point pertains to translation. Learned counsel for petitioner submits that the literacy level of the detenu is only class 3 in school. The detneu is conversant only with Tamil which his mother tongue is his further say. In the booklet, there is a remand order dated 19.04.2022 and remand extension orders dated 02.05.2022, 16.05.2022 and 30.05.2022 which have been made available in Page Nos.61 to 67. This remand order and remand extension orders have been written in English by the learned Magistrate but a Tamil translation of the same has not been provided. The booklet as served



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on the detenu, who is now incarcerated in Central Prison, Vellore, has been placed before us and a careful perusal shows that Page Nos. 61 to 67 as regards this Tamil translation have not been provided to the detenu resulting in the detenu's right to make an effective representation *qua* impugned D.O. being hampered. To be noted, detenu's rights to make an effective representation *qua* impugned D.O. is a constitutional safeguard which has been ingrained in Clause 5 of Article 22 of the Constitution of India. This constitutional safeguard or in other words the constitutional rights of the detenu *qua* making an effective representation against the D.O. has been hampered owing to Tamil translation of remand order and remand extension orders not being provided.

8. As regards the first point on delay, the rival submissions have been captured, as regards second and third points, relying on similar case and translation not being proper, the booklet has been placed before us. There is no disputation or contestation on the same. Therefore, contra submissions or capturing the same does not arise as regards second and third points.

9. In the light of narrative thus far, we make it clear that



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aforementioned three points find favour with us.

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10. Apropos, the sequitur of the narrative, discussion and dispositive reasoning set out supra is that the detention order bearing D.O. No.63/2022-C2 dated 08.06.2022 made by the second respondent is set aside and the detenu – Santhavel @ Vellai, aged 36 years, S/o.Ramu is directed to be set at liberty forthwith unless required in connection with any other case.

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

(M.S., J.) (M.N.K., J.)
30.01.2023

Index:Yes/No
Neutral Citation : Yes/No
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PS: Registry is directed to communicate this order to the Superintendent and any other jail officials of Central Prison, Vellore forthwith.

To

1.The Secretary to the Government,
Home, Prohibition & Excise Department,

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Secretariat,
Chennai – 9.

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- 2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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