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H.C.P.No.1164 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1164 of 2022

J.Shanthi

W/o.Shobai @ Joseph

..

Petitioner

Vs.

1. The Additional Chief Secretary to Govt.
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
4. The Inspector of Police
D-1, Triplicane Police Station
Chennai-600 006.

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Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the detention order in Memo No.91/BCDFGISSSV/2022 dated 23.04.2022 passed by the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set the detenu Thiru.Shobai @ Joseph, S/o.John, aged about 44 years at liberty forthwith.

For Petitioner : Mr.D.Umashankar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

This habeas corpus petition was filed on 20.06.2022 assailing a 'detention order dated 23.04.2022 bearing reference No.BCDFGISSSV No.91/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., jurisdictional Commissioner of Police. To be noted, fourth respondent is a Sponsoring Authority.

2. The petitioner is the wife of detenu.



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3. In and by the impugned detention order, the detenu has been detained on the premise that he is a 'Goonda' within the meaning of 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].

4. There are two adverse cases and one ground case as against the detenu.

5. Mr.D.Umashankar, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondents are before us.

6. The learned counsel for the petitioner submitted that the detenu was detained on the strength of conspiracy under Section 120-B of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and



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clarity]. Admittedly, he is not present at the time of scene of occurrence. He submitted that the Detaining Authority by referring to a similar case in CrI.M.P.Nos.18385 and 18431 of 2021 in Crime No.944 of 2021 for offences under Sections 147, 148, 341, 302 and 506(ii) of IPC passed impugned detention order against the detenu, wherein the learned Principal Sessions Judge, Chennai granted bail. He further submitted that in Crime No.155 of 2022 (ground case) offences are under Sections 147, 148, 341, 294(b), 302 and 506(ii) of IPC and subsequently, altered into Sections 147, 148, 341, 294(b), 302, 506(ii) and 120-B of IPC. Hence, both the cases are not similar. It is seen that in the present case, the detenu was arrested on 05.03.2022, the impugned detention order came to be passed on 23.04.2022, hence, there is no live and proximate link between the grounds of detention and purpose of detention.

7. The learned Additional Public Prosecutor, by referring to paragraph No.10 of the counter affidavit, submitted that considering the gravity of the offences, a proposal for the detention of the detenu was placed by the Sponsoring Authority and the Detaining Authority after careful perusal of



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case diaries of the cases, came to the subjective satisfaction and passed the impugned detention order.

8. In this regard, Hon'ble Supreme Court in ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***] has held that as number of days has not been prescribed for making a detention order by the Detaining Authority, whether live and proximate link between grounds of detention and purpose of detention has snapped has to be examined on a case to case basis. Relevant paragraph is paragraph No.21 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



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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.'

9. It was submitted that as regards similarity, except Section 120-B of IPC, all other sections are one and the same. Further in the ground case, there are totally five detenus, all detained under Gooda, out of which detention orders quashed by this Court on 19.12.2022 in H.C.P. Nos.991 of 2022, 999 of 2022, 1390 of 2022 and on 23.12.2022 in H.C.P.No. 1783 of 2022 as against the co-detenus/co-accused.

10. On perusal of bail order and the booklet, it is seen that in the similar case in CrI.MP.Nos.18385 of 2022 and 18431 of 2022, in Crime No.944 of 2021 referred to in the detention order, offences are under Sections 147 148, 341, 302 and 506(ii) of IPC. As regards the ground case in Crime No.155 of 2022, offences are under Sections 147, 148, 341, 294(b), 302 and 506(ii) of IPC and subsequently, altered into Sections 147, 148, 341, 294(b), 302, 506(ii) and 120-B of IPC, both cases are not similar and subjective



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satisfaction arrived on comparison of this case is not proper. The detenu in this case was arrested on 05.03.2022, the impugned detention order clamped on 23.04.2022, there is a delay of 49 days. On examination, it is seen that there is no satisfactory explanation, hence live and proximate link snapped.

11. Considering the submissions made by both sides and considering the materials placed before us, this Court is inclined to quash the detention order.

12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.04.2022 bearing reference BCDFGISSSV No.91/2022 made by the second respondent is set aside and the detenu Thiru.Shobai @ Joseph, aged 44 years, son of John is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

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

(M.S.,J.)

(M.N.K.,J.)

02.02.2023

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

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Central Prison, Puzhal, Chennai.

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

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To

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2. The Commissioner of Police,
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(Goondas Section)
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6. The Public Prosecutor
High Court, Madras.

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