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H.C.P.Nos.1242, 1248 and 1320 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

Coram

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

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

H.C.P.Nos. 1242, 1248 and 1320 of 2022

H.C.P.No.1242 of 2022

H.Parimala

.. Petitioner

-VS-

1. State of Tamil Nadu,
Rep. By The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai – 600 009
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District
Nagapattinam.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
4. The Superintendent,
Central Prison,
Tiruchirappalli.
5. The Circle Inspector of Police
Kilvelur Police Station,
Nagapattinam District.

...
Respondents



H.C.P.Nos.1242, 1248 and 1320 of 2022

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records in connection with the detention order passed in C.O.C.No.31/2022 dated 11.06.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Hariharan, S/o. Kalamegam, male, aged 27 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner .. Ms.S.Vasavi Sridevi
For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor

H.C.P.No.1248 of 2022

C.Selvi Ramayi .. Petitioner

-VS-

1. State of Tamil Nadu
Rep. By The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai – 600 009.
2. The District Collector
and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District
Nagapattinam.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.



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4. The Superintendent,
Central Prison,
Tiruchirappalli.

5. The Circle Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.

. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus, calling for the entire records in connection with the detention order passed in C.O.C.No.32/2022 dated 11.06.2022 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Gurubalan, S/o. Chandrasekar, male, aged 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner .. Ms.S.Vasavi Sridevi

For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor

H.C.P.No.1320 of 2022

Mala .. Petitioner

-VS-

1. The State of Tamil Nadu
Rep. by The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.



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3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.

4. The Superintendent,
Central Prison, Tiruchirappalli.

5. The Circle Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.

...
Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the entire records in connection with the detention order passed in C.O.C.No.33/2022 dated 11.06.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Thamilmaran, S/o.Dhanuskodi, male, aged 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner	..	Ms.S.Vasavi Sridevi
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor

COMMON ORDER

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

This common order will govern captioned three Habeas Corpus Petitions ('HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity). The details that may be imperative for



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appreciating this common order are given in the form of a tabulation infra:

Sl. No.	HCP No.	Name of the petitioner and Relationship with the detenu	Date and Reference No of Detention Order
1	1242 2022	of H.Parimala/Wife of the Detenu	11.06.2022/C.O.C.No.31/2022
2	1248 2022	of C.Selvi Ramayi/Mother of the Detenu	11.06.2022/C.O.C.No.32/2022
3	1320 2022	of Mala/Mother of the Detenu	11.06.2022/C.O.C.No.33/2022

Further short facts that are imperative for appreciating this common order are that all three detenus have been detained *qua* detention orders made by the second respondent (jurisdictional District Collector) on the premise that the detenus are Goondas 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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity]; that the adverse cases pertain to alleged offences under Sections 147, 148, 294(b), 341,



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323, 324, 506(ii) and 147, 148, 294(b), 324, 427, 447, 435, 436, 380 and 307 of Indian Penal Code; that the ground case pertains to an alleged offence under Section 399 of Indian Penal Code; that there is allegation of offence under Section 25 (1A) of Arms Act, 1959 also; that the detenus were remanded to judicial custody on 18.04.2022; that the detention orders were made when the detenus were still in custody of the State; that post remand to judicial custody on 18.04.2022 the remand was first extended upto 02.05.2022; that thereafter the remand was extended from time to time and it was last extended upto 13.06.2022; that when the detenus were in the custody of the State i.e., when they were lodged in Central Prison, Trichy, the detention orders came to be made on 11.06.2022; that the details of the detention orders have already been captured in the tabulation which has been set out supra elsewhere in this order; that the captioned HCPs have been filed assailing the detention orders on various grounds.

2. This Court having captured the essential facts shorn of elaboration and granular particulars now proceeds to consider the HCP petitioners' campaign against the detention orders. Ms.Vasavi Sridevi, learned counsel for petitioners in all three captioned matters who is before us, notwithstanding very many grounds that



have been raised in the support affidavit focused her submission on three points and they are as follows:

2.1 There is infraction/violation of Section 8(1) of Act 14 of 1982 as the ground on which the detention orders have been made has not been communicated to the detenus within five days from the date of detention (to be noted, the grounds have been served on the detenus by the prison authorities in the form of a booklet and therefore the same shall be referred to as 'booklet' for convenience). It is also to be noted that this ground has been urged as ground (f) in the support affidavit.

2.2 There is violation of Article 22 sub clause (1) of the Constitution of India as the ground of arrest or arrest itself has not been informed to a relative/near friend. To be noted, this is ground (b) in petitioners' affidavit.

2.3 There is no imminent possibility of the detenus being enlarged on bail as the detenus moved a



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bail petition vide Crl.M.P.No. 2044 of 2022 on the file of the Judicial Magistrate No.I, Nagapattinam, the bail petition came to be dismissed on the same day (20.04.2022) and thereafter, the detenus have not moved any bail petition. The detention orders have been made on 11.06.2022 inter-alia on the premise of imminent possibility of enlargement on bail.

3. In response to the aforementioned grounds raised by the learned counsel for HCP petitioners, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of all the respondents instructed by the police authorities concerned, made submissions which are as follows:

3.1 As regards Section 8(1) violation, Prosecutor would submit that the grounds of detention have been communicated within time but it is kept in a particular place in prison and it has to be collected by the detenus.

3.2 As regards Article 22(1) violation/infracton, it was submitted that the detenu's uncle in one case and friend in other two cases one Baranikumar was duly



informed and it is indicated in the arrest memos.

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3.3 As regards imminent possibility of being enlarged on bail, it was submitted, that it appears that steps are being taken for moving bail application on behalf of the detenus.

4. By way of reply, learned counsel for HCP petitioners reiterated her arguments in the opening submissions.

5. This Court having captured the rival submissions now proceeds to discuss the same and give its dispositive reasoning infra in the paragraphs to follow.

6. Before we do that, we remind ourselves of two aspects/facets of preventive detention jurisprudence. One facet is, preventive detention is not a punishment as held by Honourable Supreme Court in the oft quoted *Ashok Kumar's* case i.e., ***Ashok Kumar V. Delhi Administration and Ors.*** reported in **(1982) 2 SCC 403**. The second facet is declaration of law by a Constitution Bench in the celebrated judgment in ***Dr. Ram Manohar Lohia vs State Of Bihar And Others*** reported in **AIR 1960 SC 740** and



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more particularly paragraphs 51 and 52 thereat where the Honourable Supreme Court has elucidatively and by resorting illustrative approach articulated the clear distinction between 'law and order' and 'public order'.

7. We now proceed to deal with the points canvassed sequentially. As regards the first point, the same deals with Section 8(1) of Act 14 of 1982. A careful reading of Section 8(1) leads to the inevitable conclusion that it is a codified numeric expression of the constitutional guarantee *qua* Article 22 (5) of the Constitution of India. Section 8(1) of Act 14 of 1982 reads as follows:

'8. Grounds of order of detention to be disclosed to persons affected by the order.-(1)

When a person is detained in pursuance of a detention order, the Authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.



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In this view of the matter, we have no hesitation in coming to the conclusion that there has been delay, as the detenus were detained on 18.04.2022 and remanded to custody and they continued to be in detention upto 13.06.2022 whereas the detention orders that were made on 11.06.2022 when the detenus were in State custody but served on them only on 21.06.2022. A scanned reproduction of a typical page in the booklet is as follows:



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8. To be noted, the seal is the same in all the cases and therefore we have scanned and reproduced one page in one of the cases which speaks for itself. It is clear that grounds of detention *qua* the impugned detention orders have been communicated to the detenus only on 21.06.2022 post noon i.e., at 12.45 p.m. though the detention orders were made on 11.06.2022 on which day the detenus were already under detention i.e., State custody. This is a clear violation of Section 8(1) of Act 14 of 1982 i.e., the very Act under which preventive detention orders have been clamped on the detenus. As already alluded to supra, Section 8(1) being a codified numeric facet of Article 22(5) of the Constitution of India, Section 8(1) is statutorily imperative for ensuring the constitutional guarantee of giving earliest opportunity to the detenu to make an effective representation to the State. It is also to be noted that this is ingrained in the second part of Section 8(1) which has been extracted and reproduced supra. This by itself good enough dispositive reasoning *qua* first point is in favour of the HCP petitioners.

9. We also deem it appropriate to record that the aforementioned ground wherein Section 8(1) of Act 14 of 1982 has been raised as ground (f) reads as follows:



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'(f) That the detaining authority passed the detention order on 11.06.2022 and furnished the booklet to the detenue after 5 days from the date of passing the detention order. It shows that the detaining authority has prevented the detenue from making the effective representation to the Government and clear violation of Sec.8(1) of the Act 14/1982.'

Ground (f) has been met by the State in the counter affidavit in the following manner:

'Ground 'f': It is respectfully submitted that the averments of the petitioner herein in grounds 'f' of the affidavit are denied as false since the booklet had been served on the detenu within the time stipulated and the detenu had also made effective representations towards his detention. The averment of the petitioner is devoid of merit.'

10. A bare perusal of the counter affidavit brings to light that there is nothing to demonstrate that grounds of detention *qua* the impugned detention orders were communicated to the detenu within five days from the date of detention. The counter affidavit does not also throw any light to demonstrate that the grounds of detention were communicated to the detenu within five



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days from the date of the detention in any event the oral submission made by the learned Additional Public Prosecutor have already been dealt with supra.

11. In this regard, we deem it apposite to usefully refer to our order dated **19.01.2023** in **M.Shylaja Vs. Additional Chief Secretary to Government and Others (reported in Neutral Citation of this Court being 2023/MHC/193)**, wherein in a similar Act 14 of 1982 detention, we drew inspiration from ratio in **Malleeswari Vs. State Government, rep. By the Secretary to Government and another** reported in **(2011) 1 MLJ (CrI) 513** (rendered by another Hon'ble Division Bench of this Court) and held as follows in paragraphs 9 to 12:

'9. In this regard, we draw inspiration from ratio in **Malleeswari Vs. State Government, rep. By the Secretary to Government and another** reported in **(2011) 1 MLJ (CrI) 513**, wherein a Hon'ble Division Bench of this Court has held that delay in supplying copy of detention order, grounds and connected papers to the detenu i.e., delay beyond 5 days from the date of detention is clearly violation of Section 8(1) of Act 14 and that by itself becomes a ground to make an order setting aside the detention. To be noted, in **Malleeswari** case also, the detention was under Act 14 albeit as a 'Goonda' and detenu was in prison.



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10. We notice one other feature and that is in all the detention orders, the provision of law has been mentioned as Section 2(ggg), whereas it is Section 2(1)(ggg) of Act 14 of 1982 as detention is posited on 'sexual offenders' but leave this issue open in this order as it is not clear if it is a misprint in this book titled 'A Handbook of Preventive Laws' [October 2021, Third edition] by S.Samandham / V.S.Rajaram and published by C.Sitaraman & Co. Pvt. Ltd., as Gazette publication of ordinance [Ordinance 1 of 1982 published in Tamil Nadu Government Gazette on 05.01.1982] does not have sub-section (1).

11. With regard to custodial jurisprudence, in **Pattammal Vs. District Magistrate and Collector Nagai and Others** reported in **1995(1) CTC 335**, which is also under Act 14 of 1982, a Hon'ble Division Bench of this Court dealing with detention under Act 14 has held that Section 8 of Act 14 of 1982 is intended to confer a right for detenu qua an opportunity to make a representation against an order of detention.

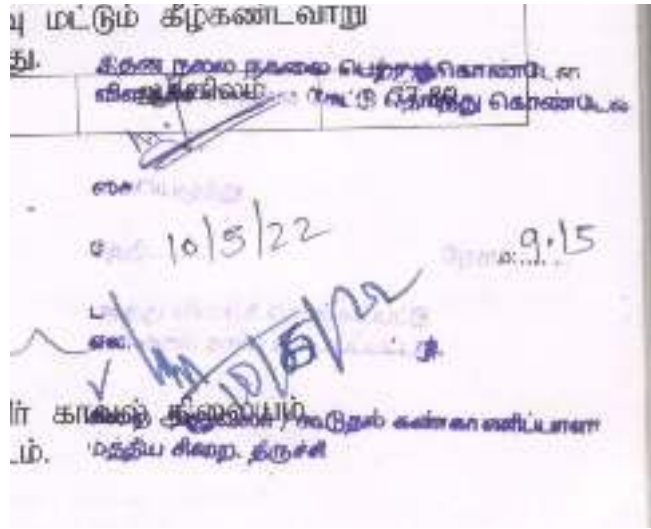
12. We have noticed that the language in which Section 8 of Act 14 of 1982 is couched makes it clear that 'not later than five days' is from the date of detention. In the cases on hand, the detenues were already under detention. This is one facet of the matter. Another facet of the matter is, on detention orders being made, preventive detention of the detenus operates and in the cases on hand, the grounds of detention have been served beyond five days from the date of detention orders. A scanned reproduction of undisputed seal of the prison authorities in one of the cases [HCP No.1182 of 2022] as an illustration is as follows:



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12. Notwithstanding this dispositive reasoning, we now proceed to deal with other two points that have been raised turning on Article 22(1) of the Constitution of India. We are very clear in our mind that Article 22(1) does not apply to preventive detention under any law providing for preventive detention owing to Article 22 (3)(b). The sub-clauses (1) to (3) of Article 22 read as follows:

'22. (1) *No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*

(2) *Every person who is arrested and detained in custody shall be produced before the nearest*



magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.'

13. However, Article 22(5) comes to the rescue of the HCP petitioners *qua* delay in communicating grounds of detention and Article 22(5) reads as follows:

'22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.'

14. It is also to be noted that Article 22(1) argument of the HCP petitioners is more in the nature of the ground case and not in the nature of the detention orders. In this view of the matter, we perused the arrest memos in the cases. From the arrest memos, we



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find that the factum of detention in ground case has been informed to one Baranikumar, we are of the view that Baranikumar is uncle of the detenu in H.C.P. No.1242 of 2022 and is a friend as regards the detenus in H.C.P. Nos.1248 and 1320 of 2022. In this view of the matter, the counter affidavit of the State becomes imperative. As already alluded to supra, Article 22(1) ground has been raised as ground (b) in the HCP affidavit and the same is as follows:

'(b) That the sponsoring authority has failed to inform the arrest of the detenu in ground case to parents, family members and friends of the detenu. It is a violation of Article 22(1) of our Constitution of India and the authority did not follow the dictum laid down by the Hon'ble Apex Court in D.K.Basu Vs. State of West Bengal case.'

Ground (b) has been met in the counter affidavit of the State in the following manner:

'Ground 'b': With regards to the averments of the petitioner herein in ground 'b' it is humbly submitted that Tmt.Parimala, wife of the detenu was informed of his arrest and acknowledgement obtained from her. Hence, the averment of the petitioner is incorrect and devoid of merits.'

15. The above makes it clear that it is the stated position of the State that the arrest of the detenu was intimated to the



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detenu's wife Tmt.Parimala (petitioner in HCP No.1242 of 2022 as far as that detenu is concerned) whereas the arrest memo shows the name of one Baranikumar. This by itself makes it clear that there is infraction of Article 22(1) and further elucidation or other enquiry in this direction is not necessary as that is really outside the realm of matter at hand.

16. We now move on to the third point. In the grounds of detention itself, it has been made clear that the bail petition filed by the detenus was dismissed on the same day i.e., 20.04.2022 by the jurisdictional Magistrate. There is no disputation or contestation or disagreement before us that the detenus have not moved any bail petition thereafter. This itself makes it clear that the imminent possibility of the detenus being enlarged on bail point also becomes a non-starter.

17. To be noted, careful perusal of grounds of detention, more particularly paragraph 4 thereat brings to light that imminent possibility of being enlarged on bail is only an inference not even in the realm of surmises and conjectures made by the detaining authority. The relevant portion of the detention order (in H.C.P. No.1242 of 2022) reads as follows:



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'4. Hence, I infer that there is real possibility of Thiru.Hariharan, Male, age 27/2022, S/o.Kalamegam, coming out on bail by filing a bail application for the above case before the appropriate court and higher court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public peace. Further, the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance to the public order and public peace.'

18. Apropos the sequitur of the discussion and dispositive reasoning set out supra is that all the three detention orders bearing C.O.C. No.31 of 2022, C.O.C.No.32 of 2022 and C.O.C. No.33 of 2022 dated 11.06.2022 made by the second respondent are set aside and the detenus - Hariharan, aged 27 years, S/o.Kalamegam (H.C.P. No.1242 of 2022), Gurubalan, aged 23 years, S/o.Chandrasekar (H.C.P. No.1248 of 2022 and Thamilmaran, aged 23 years, S/o.Dhanuskodi (H.C.P. No.1320 of 2022) are directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs in these cases.

[M.S., J.] [M.N.K., J.]
24.01.2023



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Index:Yes/No

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1. The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector
and District Magistrate
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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

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