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HCP No.1332 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. No.1332 of 2022

Shanthi

W/o.Jothimurugan

... Petitioner(mother of detenu)

-VS-

1. The Secretary to Government

Home, Prohibition & Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police/Detaining Authority,
Tiruppur City,
Tiruppur District.

3.The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.

4.State rep. by its
The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur District.

... Respondents



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Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 23.06.2022 on the file of the second respondent herein made in proceedings Memo C.No.48/G/IS/Tiruppur City/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Vijay, S/o.Jothimurugan, aged 22 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner	..	Mr.S.Senthilvel for Mr.W.Camyles Gandhi
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, convenience and clarity] has been filed in this Court on 08.07.2022 assailing a detention order dated 23.06.2022 bearing reference C.No.48/G/IS/Tiruppur City/2022 [hereinafter 'said detention order' for the sake of brevity, convenience and clarity]. The said detention order has been



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made by the second respondent, i.e. 'jurisdictional Commissioner of Police' who shall hereinafter be referred as 'detaining authority' for the sake of convenience qua a 22 year old detenu and the detenu's mother is the HCP petitioner. The said detention order has been made by the second respondent on the premise that the detenu is a Goonda within the meaning of Section 2(f) of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience].

2.Mr.S.Senthilvel, learned counsel representing Mr.W.Camyles Gandhi, learned counsel on record for HCP petitioner notwithstanding very many averments in the support affidavit made focused submission on two points. Before discussing the two points, capturing short facts or in other words setting out factual matrix in a nutshell containing essential facts imperative for appreciating this order is deemed relevant.

3.As already alluded supra, the said detention order made by the



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second respondent is dated 23.06.2022: the detenu was arrested prior to the said detention order on 21.05.2022 in Crime No.305 of 2022 on the file of Anupparpalayam Police Station interalia for an alleged offence under Section 394 Indian Penal Code [IPC] and Section 83(2) of 'Juvenile Justice [Care and Protection of Children] Act, 2015' which shall hereinafter be referred as 'JJ Act' for the sake of convenience, that this Crime No.305 of 2022 shall hereinafter be referred to as ground case for the sake of convenience and clarity, that post remand in the ground case on 21.05.2022 the detenu moved two bail petitions being CrI.M.P.No.4626 of 2022 and CrI.M.P.No.5485 of 2022 and both bail petitions came to be dismissed on 02.06.2022 and 15.06.2022 respectively by the jurisdictional Magistrate being Judicial Magistrate No.III, Tiruppur, that thereafter the detenu has not taken any steps to move a bail application, more so as the detenu being incarcerated; that the said detention order came to be made on 23.06.2022 branding the detenu as Goonda within the meaning of Section 2(f) of Act 14 of 1982: that the detenu's mother [as already alluded to supra] has filed this captioned HCP on 08.07.2022.



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4.Reverting to the two pronged challenge to the said detention order

by the learned counsel for the HCP petitioner, a summation of the same are as follows:

(a) There is no reason for the detaining authority to infer that there is imminent possibility of the detenue being enlarged on bail in the light of dismissal of two bail petitions. Elaborating on this, learned counsel submitted that a perusal of the grounds of detention brings to light that the detaining authority has relied on what according to him is a similar case being Crime No.3 of 2022 and a perusal of bail order in Crime No.3 of 2022 being bail order in E.Crl.M.P.No.170 of 2022 on the file of the Judicial Magistrate No.III, Tiruppur in the case of one Abdul Rahman but it is a case of alleged offence under Section 394 IPC simplicitor and there is no JJ Act charge in the case.

(b) As regards the remand order dated 21.05.2022 made by Judicial Magistrate No.III, Tiruppur, in the booklet given to the detenu, the translation is incorrect. Elaborating on this, learned counsel submitted that while the Judicial Magistrate has written



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that a perusal of FIR and connected records make out a prima facie case for remand, the regional language translation, i.e. Tamil translation talks about first case, in other words, முகாந்திரம் in Tamil has been wrongly mentioned as முதன்மை and this seriously prejudiced the rights of the detenu to make an effective representation as there are two other adverse cases qua the detenu.

5.Responding to the aforesaid two pronged attack, learned Additional Public Prosecutor Mr.R.Muniyapparaj submitted that the bail order dated 28.01.2022 may not have mentioned all the provisions. As regards the translation, learned Additional Public Prosecutor submitted that the crux and gravamen of the remand order has come out in the translation and the petitioner is nitpicking on finesse of language. To put it differently, writ petitioner is harping on semantics is learned Additional Public Prosecutor say.

6.By way of reply, the learned counsel for Habeas Corpus petitioner



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reiterated his arguments in the opening submissions.

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7.We now proceed to consider the two pronged attack, the rival submissions and proceed to set out our discussion and dispositive reasoning *infra*.

8.As regards the first point, there is no disputation or disagreement that two bail petitions [details given *supra*] moved by the detenu before the jurisdictional Magistrate, i.e. Judicial Magistrate No.III, Tiruppur have been dismissed on 02.06.2022 and 23.06.2022. The question now is whether there was sufficient reason for the detaining authority to arrive at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail. For this purpose, one has to necessarily look at the similar case which the detaining authority has relied on, i.e. Abdul Rahman's case and order dated 28.01.2022 in E.Crl.M.P.No.170 of 2022 vide Crime No.3 of 2022 on the file of the same Anupparpalayam Police Station in Tiruppur. A careful perusal of this order makes it clear that Abdul Rahman's case is one under Section 394 IPC alone and there is no mention about JJ Act. The



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argument that it might not have been mentioned in the caption does not find favour with us as the body of the order also makes it clear and captures that a petition for bail under Section 437 Cr.P.C. has been filed qua alleged offence under Section 394 IPC. There is nothing else in the bail order to suggest that it pertains to JJ Act. On a demurer assuming for a moment that Abdul Rahman's case pertains to JJ Act offence, the bail order i.e. order dated 28.01.2022 which was before the detaining authority as furnished to the detenu does not mention anything about the JJ Act. Therefore, on the basis of the copy of the order that was before the detaining authority, the detaining authority could not have arrived at the subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail. For the sake of convenience and clarity, we deem it appropriate to scan and reproduce the bail order dated 28.01.2022 in Abdul Rahman's case and the same is as follows:



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THE COURT OF JUDICIAL MAGISTRATE COURT No. III, TIRUPUR

PRESENT: Tmt. V. Udayasuriya, M.L.

Judicial Magistrate No. III, Tirupur

Dated this Friday the 28th day of January 2022

E.Cr.M.P No.170/2022

CNR NO. TNT11A-00020002022

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Abdul rahman (aged 24-2022),
s/o. Kamal haisha,

... Petitioner/Accused.

Sure represented by
Inspector of Police,
Anupparalayam Police station,
Tiruppur.
(Crime No.3/2022)
U/s. 394 IPC.

... Respondent/Complainant

This petition coming on this day for final hearing before me in the presence of Mr.Ganapathy..M.B.A..B.L., the learned counsel for the Petitioner/Accused and the learned assistant public prosecutor Grade II for the state, after hearing both side arguments through jitsi video conference, perusing the written reply submitted by the respondent and records this court delivers the following:

ORDER

1. This petition is filed U/s. 437 of Cr.P.C to enlarge the accused on bail who was remanded for the alleged offence U/s. 394 IPC in the file of Anupparalayam Police Station, Tiruppur in Cr.No. 3/2022.

2. The learned counsel for the petitioner/Accused stated that. The petitioner/Accused has not involved in the offence as stated in the FIR and the petitioner/Accused is very innocent and he is the bread winner of his family. Totally false alleged statement given by the complainant/respondent police they are not seized anything form the Petitioner/Accused. The Petitioner is a law abiding citizen and so he will not abscond. Hence, prays to enlarge the petitioner on bail and he is ready to furnish substantial sureties and abide any condition imposed as per law.

சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது

சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது

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INSPECTOR OF POLICE,
ANUPPARPALAYAM P.S.,
TIRUPUR CITY.

சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது
சென்னை குற்றம் குறைந்தது

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சென்னை குற்றம் குறைந்தது



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3. The respondent police and the learned Assistant public prosecutor Grade II stated in their reply that, the accused don't have permanent address in Tiruppur and the investigation is still pending. Further the respondent police stated that, If the accused was enlarged on bail he may commit the same kind of offence and may tamper the witnesses and may abscond and prays to dismiss the petition.

4. Petitioner side heard. On the perusal of records the accused was remanded and sent to judicial custody on 02.01.2022 and he is in the judicial custody for the past 26 days. Further, the accused also discharged from treatment. On perusal of records, it was seen that the injured was discharged from treatment on 05.01.2022. The case property was recovered. Therefore, in the absence of any serious objection from the respondent, this court on considering the arguments by both side and the facts and circumstances and the period of incarceration of the accused and other aspects, this court is inclined to grant bail to the petitioner on the following conditions...

1. The petitioner/Accused is directed to execute a bond for a sum of Rs.10,000/- along with two native sureties each to the satisfaction of the like sum.
2. The petitioner/Accused is directed to co-operate with investigation.
3. The petitioner/Accused shall submit their proof of identity and proof of permanent and temporary address.
4. The petitioner/ Accused shall not leave India without prior permission from this court.

This order dictated by me to the stenographer and typed by her directly in the computer and pronounced and pronounced by me in the open court this 28th day of January 2022.



Judicial Magistrate No. III,
Tiruppur.

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INSPECTOR OF POLICE,
ANUPPARPALAYAM P.S.,
TIRUPUR CITY.

தமிழ் பாரதத்து சென்னைக் கொள்கைகள்
இதன் கீழ்க் கொள்கைகள்
கொள்கைகள் கொள்கைகள்

J. V. Jay
சென்னை-19

சென்னை-19
சென்னை-19
சென்னை-19



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9. The possibility of a detenu may be an imminent possibility. A detenu being enlarged on bail is a very important determinant as regards preventive detention orders being clamped. The reason is the detention order has to necessarily turn on public order and not just law and order. This distinction between the 'law and order' and 'public order' has been elucidatively brought out by a Constitution Bench of the Supreme Court in the celebrated ***Ram Manohar Lohia vs. State of Bihar and others*** reported in ***AIR 1966 SC 740*** case law and more particularly, paragraphs 51 and 52 thereof, which read as follows:

51. This brings us to the last contention of Dr. Lohia and that is the most serious of all. He points out that the District Magistrate purports to detain him with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order and argues that the District Magistrate had misunderstood his own powers which were to prevent acts prejudicial to public order and, therefore, the detention is illegal. On the other side, Mr. Verma contends that the Act and the Rules speak of public order which is a concept much wider in content than the concept of law and order and includes the latter,



and whatever is done in furtherance of law and order must necessarily be in furtherance of public order. Much debate took place on the meaning of the two expressions. Alternatively, the State of Bihar contends that the order passed by the District Magistrate prior to the issue of the actual order of detention made use of the phrase "maintenance of public order" and the affidavit which the District Magistrate swore in support of the return also uses that phrase and, therefore, the District Magistrate was aware of what his powers were and did exercise them correctly and in accordance with the Defence of India Act and the Rules. We shall now consider the rival contentions.

52. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public, safety and interest, the defence of India and civil defence. The expressions public safety and interest between them indicate the range of action for maintaining - security, peace and tranquillity of India whereas the expressions defence of India and civil defence connote defence of India and its people against aggression from outside and! action of persons within the country. These generic terms were used, because the Act seeks to



provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, s. 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into "maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community". Then it mentions by way of illustration in Clause (15) of the same section the power of apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable:--

- (a) of being of hostile origin; or
- (b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to-
 - (i) the defence of India and civil defence;
 - (ii) the security of the State;
 - (iii) the public safety or interest;
 - (iv) the maintenance of public order;



- (v) India's relations with foreign states;
- (vi) the maintenance of peaceful conditions in any part of area of India;
- or
- (vii) the efficient conduct of military operations.

10.A careful perusal of the aforesaid declaration of law by the Constitution Bench makes it clear that the three concentric circles theory make it clear that only when there is an imminent possibility of being enlarged on bail, there is a possibility of law and order theory moving into the second concentric circle of public order. That is absent in the case.

11.In addition to the above case, the learned counsel for petitioner placed reliance in the case of ***Vettaiyan vs. The Additional Chief Secretary to Government and others*** reported in ***2020 (2) MadWN [CrI] 543***, wherein a Hon'ble Division Bench of this Court dealing with similar facts, i.e., detention order under Act 14 of 1982 branding the detenu as a Goonda under Section 2(f) of Act 14 of 1982 held that subjective satisfaction arrived at by the detaining authority, i.e. subjective satisfaction qua imminent



possibility of the detenu coming out on bail by relying on a case which really is not a similar case tantamounts to non-application of mind. Most relevant paragraphs in Vettaian's case are paragraphs 3 and 5, which read as follows:

'3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered at Kannankurichi Police Station Cr.No.693/2018 u/s 392 r/w 397 & 506(ii) IPC against one Mandai Vijay @ Vijayakumar, bail has been granted by the Principal Sessions Judge, Salem in C.M.P.No.346/2019 dated 02.02.2019 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 392 r/w 397 & 506(ii) IPC whereas the offences involved in the ground case are under



Sections 341, 392 r/w 397, 506(ii) IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.'

12. We draw inspiration from Vettaian's case to say that in the case on hand subjective satisfaction is said to have been arrived at by the detaining authority qua imminent possibility of enlargement of the detenu on bail does not pass muster and proves fatal to the detention order. This takes us to the second point that has been canvassed. The second point turns on translation as would be evident from the rival arguments that have been captured and set out supra. In this regard, we deem it appropriate to scan and reproduce the remand order in English and Tamil as made available to the detenu, i.e. remand order dated 21.05.2022.

13. A scanned reproduction of order made in English by the learned jurisdictional Magistrate is as follows:



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HCP No.1332 of 2022

IN THE COURT OF JUDICIAL MAGISTRATE NO. III, TIRUPUR

Case No. 1332 of 2022

State vs. Anuppar Palayam

Accused

Vs

Represented by

Inspector of Police

Anuppar Palayam Police station, Tiruppur

No. 1332 of 2022

Respondent/Complainant

Remand Order

DATE 11.05.2022

Accused are produced before me at 09.45 pm. Case against accused explained arrest. Right in legal aid explained. On perusal of FIR and inspection papers the prima facie case against accused made out for remand them. Hence accused are remanded in judicial custody till 07.06.2022.

Sd/- Mr. Karthikeyan B.A.B.
Judicial Magistrate No. III (FAC),
Tiruppur.

Sd/-
Clerk

Sd/-
Stenotypist

Sd/-
Held Clerk

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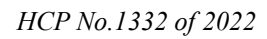
INSPECTOR OF POLICE,
ANUPPARPALAYAM P.S.,
TIRUPUR CITY.

பிரதம அமைச்சர், தமிழக அரசு, சென்னை
பிரதம அமைச்சர், இந்திய அரசு, நியூ டெல்லி
தமிழக அரசு, திருச்சி, திருப்பரங்குளம்

1. V. J. Jayaram
கல்வி அமைச்சர், திருச்சி

தமிழக அரசு, திருச்சி, திருப்பரங்குளம்
தமிழக அரசு, திருச்சி, திருப்பரங்குளம்
தமிழக அரசு, திருச்சி, திருப்பரங்குளம்

தமிழக அரசு, திருச்சி, திருப்பரங்குளம்
தமிழக அரசு, திருச்சி, திருப்பரங்குளம்
தமிழக அரசு, திருச்சி, திருப்பரங்குளம்



Tamil provided to the detenu as part of the booklet is as follows:





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16. We are informed that the detenu is a Truck Driver by avocation and has had education upto Grade IX in School. In this view of the matter, the sentence in the remand order which says 'on perusal of FIR and connected papers, prima facie case made out for remand' would translate to 'முதல் தகவல் அறிக்கை மற்றும் தொடர்புடைய ஆவணங்களை பரிசீலித்ததில் எதிரியை காவல்படுத்த முகாந்திரம் உள்ளது', whereas the translation reads otherwise. Therefore considering the educational qualification of the detenu, we are inclined to sustain the argument of the petitioner that effective representation constitutional guarantee to the detenu has been affected. We are inclined to accept the argument that the detenu was lulled into the belief that reference in the remand is to the first of the cases against him and it did not really mean prima facie case for remand. We remind ourselves that we are dealing with preventive detention which is not a punishment. Therefore, it is imperative that when a preventive detention order is clamped, the translation with exactitude in the language which the detenu is conversant with is furnished



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to the detenu. This turns on a constitutional guarantee which has been given

to a detenu of this kind and which has been ingrained in Sub-Clause (5) of

Article 22 of the Constitution of India which is as follows:

22. Protection against arrest and detention in certain cases:

(1)

(2)

(3)

(4)

(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.

17. The second point also is sustained and it sails through qua the petitioner in the captioned HCP.

18. Ergo, the sequitur is captioned HCP is allowed and the detention



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order dated 23.06.2022 bearing reference C.No.48/G/IS/Tiruppur City/2022

dated 23.06.2022 is set aside and the detenu Vijay, aged 22 years, son of Jothimurugan is directed to set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
24.01.2023

Index:Yes

Neutral Citation : Yes

cse

Note: Upload forthwith

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Commissioner of Police/Detaining Authority,
Tiruppur City, Tiruppur District.
3. The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.
4. The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur District.



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

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24.01.2023