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H.C.P.No.1388 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

Coram

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

H.C.P.No.1388 of 2022

Mrs.Gomathi
W/o. Lallu @ Lalluprasath ... Petitioner/ wife of detenu

-VS-

1. The Principal Secretary to Government
Home, Prohibition & Excise (XVI) Department
Fort St. George, Secretariat
Chennai – 600 009
2. The District Magistrate and District Collector
Office of the District Collector, Salem District
3. The Superintendent of Police
Office of the Superintendent of Police
Salem District
4. The Superintendent of Police
Central Prison at Salem, Hasthampatty, Salem
5. The Inspector of Police
Kaumalaikoodal Police Station, Salem 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 calling for the records in Detention Order in C.M.P.No.15/GOONDA/C2/2022 dated 18.06.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein produce the body of husband of petitioner/detenu Lallu @ Lalluprasath S/o.Sekar (Late) aged 30 years now confined in Central Prison at Salem before this Court and set him at liberty.

For Petitioner	..	Ms.R.Subadra Devi
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned Habeas Corpus Petition has been filed assailing a detention order dated 18.06.2022 bearing reference C.M.P.No.15/GOONDA/C2/2022 made by the second respondent (jurisdictional District Collector/District Magistrate) ordering detention, branding the detenu as 'GOONDA' within the meaning of 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,



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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].

2. To be noted, wife of the detenu is the Habeas Corpus petitioner herein.

3. There is one adverse case and one ground case qua detenu. Adverse case is Crime No.403 of 2020 on the file of Karumalaikoodal Police Station in Salem District and the ground case is Crime No.78 of 2022 in the same police station (Karumalaikoodal Police Station), Salem District. Adverse case is *inter alia* under Sections 341, 395, 397 IPC read with 25(1B)(a) of Indian Arms Act, 1959 and ground case is *inter alia* under Section 302 IPC.

4. Ms.R.Subadra Devi, learned counsel for petitioner assails the impugned detention order on several grounds but three grounds find favour with us. Grounds which found favour with us, discussion and dispositive reasoning qua the same are as follows:

(a) The first ground is that the live and proximate link between grounds of detention and purpose of detention has been snapped. This ground has been articulated in sub-paragraph (vi) of



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paragraph 3 of Habeas Corpus Petition support affidavit, which reads as follows:

'vi) That the detenue was arrested on 08.04.2022 and the said detention order was passed on 18.06.2022. The detention order was passed an inordinate delay which amount to violation of his personal liberty.'

This ground has been met by State in the counter affidavit in sub-paragraph (vi) of Paragraph 3, which reads as follows:

'vi) It is humbly submitted that all the averments stated in Para No. "vi" of the grounds of the Affidavit are false and not correct, except the averments pertaining to the date of arrest of the detenue and the date of detention passed. It is further submitted that the order of detention has been passed within the time prescribed by the Act 14/1982 and as such there is no delay and none of the detenue's personal liberty has been violated.'

A careful perusal of the aforementioned rival stated positions examined in the light of the submissions made by learned counsel for petitioner and learned State Additional Public Prosecutor leaves us with the conclusion that the live and proximate link between the grounds of detention and purpose of detention had in fact snapped



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as there is no time limit codified for making a detention order under Act 14 of 1982 as averred in the counter affidavit. In this regard, as an illustration, as regards constitutional safeguards ingrained in Article 22(5) of Constitution of India, grounds of arrest / detention shall be made known to the detenu so as to enable detenu to make an effective representation against the order. This Constitutional safeguard is codified i.e., put in numeric terms as five days vide Section 8(1) of Act 14 of 1982. There is no such codification with regard to making of the detention order itself turning on snapping of live and proximate link between grounds of detention and purpose of detention. As between 08.04.2022 and 18.06.2022 it is well over two months and given the facts and circumstances of the instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped.

In this regard, we draw inspiration from *Sushanta Kumar* case [*Sushanta Kumar Banik Vs. State of Tripura & Ors.* reported in



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2022 LiveLaw (SC) 813] wherein Hon'ble Supreme Court in and by an order dated 30.09.2022 under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PITNDPS Act' for the sake of brevity] held that detention order has been made more than a month post the ground case and detention. The factual matrix is comparable for the live and proximate link principle. In this regard, ratio as laid down by Hon'ble Supreme Court in ***Sushanta Kumar*** case in paragraph 20 is of relevance and the same reads as follows:

'20.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 grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the



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delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.'

Similarly in a case decided by a Hon'ble Division Bench of this Court even prior to ***Sushanta Kumar*** case supra i.e., in ***Nagaraj Vs. State of Tamil Nadu and another*** reported in ***2018(3)MadWN (Crl) 428*** to which one of us was a party (Nirmal Kumar.J.) in a case of detention of a person branding him as 'GOONDA' under Act 14 of 1982, 36 days delay in making the detention order has been held to work towards snapping the live and proximate link between the grounds and purpose of detention we are informed that Nagaraj case attained finality as it was not carried to Hon'ble Supreme Court.

b) As regards the second ground, the same turns on translation of a vital document in the 'grounds of detention' [hereinafter 'booklet' for convenience] not being given to the detenu. We are informed that the detenu's literacy level is Class IX and he is familiar only with his mother tongue Tamil. To put it with specificity, the ground is, pages 156 and 157 of the booklet have not been translated. This is



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articulated in sub-paragraph (xvii) of Paragraph 3 of the Habeas

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Corpus Petition support affidavit and the same reads as follows:

'xvii) The detaining authority failed to consider that the Post mortem report is a vital materials which relied by the detaining authority in booklet page nos.156 and 157. It had not been translated in vernacular version.'

This has been met by State in sub-paragraph (xvii) of Paragraph 3 of the counter affidavit and the same reads as follows:

'xvii) It is humbly humbly submitted that, all the averments in para "xvii" of the grounds of the affidavit are false and not correct. It is further submitted that, all the materials that ought to be translated and furnished to the detenue in connection with the detention has been duly translated and furnished to him.'

A careful consideration of the aforementioned rival stated positions in the light of submissions made by learned counsel for Habeas Corpus petitioner and learned Additional Public Prosecutor leaves us with the conclusion that the vital document is two pages in the booklet and those two pages have not been supplied to the detenu



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in the lone language which the detenu is familiar with. To be noted, these two pages constitute the postmortem certificate in the ground case being postmortem certificate dated 08.04.2022. A scanned reproduction of the postmortem certificate is as follows:



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DEPT. VETERINARY MEDICAL COLLEGE HOSPITAL - SALEM
DEPARTMENT OF FORENSIC MEDICINE
POSTMORTEM CERTIFICATE
PHONE: 756/422, 34. FAX: 35/422, 332
E-MAIL: 756/222 OF KASAMU 42234234

[illegible]

NOTIFICATION MAILED
- MAY 1963 BELL TELEPHONE
- MAY 1963 BELL TELEPHONE

POLICE FILE COPY

UNION COUNTY, MISSISSIPPI
JANUARY 15, 1966

POLICE FILE COPY

- [illegible]

[illegible]

D. E. GOULD & COMPANY
INCORPORATED
New York
Head Office: 300 Broadway
New York 1
Branches: 1000 Broadway
New York 1
1000 Broadway
New York 1
1000 Broadway
New York 1

[illegible]



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[illegible]



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A perusal of the booklet makes it clear as daylight that translation of the same has not been furnished in the booklet. In the ground urged by the habeas corpus petitioner, it has been mentioned that it has not been translated in 'vernacular version'. We choose to use the expression 'regional language' rather than 'vernacular language'. To be noted, in the case on hand, regional language is Tamil. It is further to be noted that the meaning of 'vernacular language' in New 9th Edition Oxford Advanced Learner's Dictionary is

ver-nacu-lar /və'nækjələ(r); NAmE vər'n-/ *noun* **1** (usually the vernacular) [sing.] the language spoken in a particular area or by a particular group, especially one that is not the official or written language **2** [U] (specialist) a style of ARCHITECTURE concerned with ordinary houses rather than large public buildings ► **ver-nacu-lar** *adj.*

This is the reason why we choose to say 'regional language' rather than 'vernacular language'.

(c) The third ground that find favour with us is delay in communicating the grounds of detention to the detenu. This turns on Section 8(1) of Act 14 of 1982. As already alluded to supra, we are of



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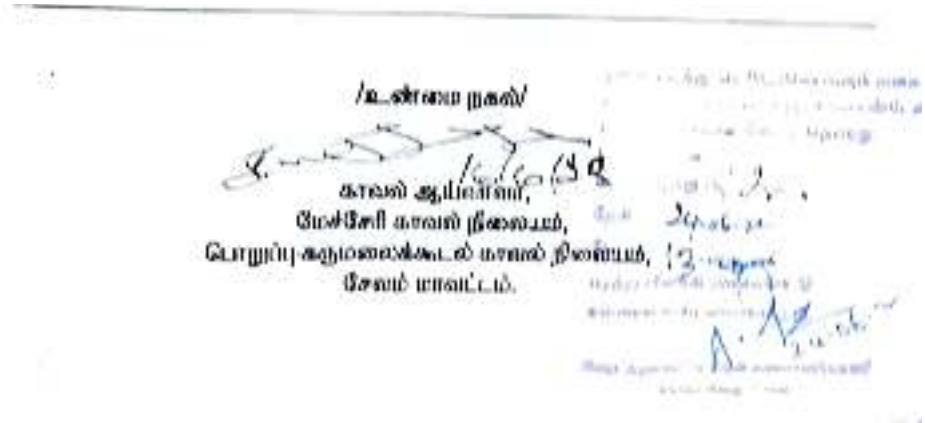
the view that Section 8(1) of Act 14 of 1982 is a constitutionally codified safeguard ingrained in Article 22(5) of the Constitution of India *inter alia* by statutorily introducing a numeric phenomenon, i.e., five days from the date of detention. To put it differently, the constitutional expression 'as soon as may be' occurring in sub-clause (5) of Article 22 of the Constitution of India has been given a numeric cap statutorily vide sub-section (1) of Section 8 of Act 14 of 1982, i.e., the constitutional expression 'as soon as may be' has been statutorily explained in terms of numbers vide the expression 'but not later than five days from the date of detention' occurring in Section 8(1) of Act 14 of 1982. In the case on hand, the detention order is dated 18.06.2022 (to be noted, detenu already incarcerated on and from 08.04.2022) but it has been served on the detenu only on 24.06.2022. A scanned reproduction of rubber stamp of the prison authorities as in the booklet furnished to the detenu as placed before us (no disputation or contestation that this is the booklet supplied to the detenu) is as follows:



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There is no dispute or contestation in this regard as already alluded to supra. This by itself makes it clear that there is an infraction of Section 8(1) of Act 14 1982. This aspect of the matter was dealt with by this Bench on 19.01.2022 in the case of ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in ***2023/MHC/193***. This case was decided by us *inter alia* by drawing inspiration from ***Malleeswari*** case [***Malleeswari Vs. State Government, rep. By the Secretary to Government and another*** reported in (2011) 1 MLJ (CrI) 513]. Relevant paragraphs in ***M.Shylaja*** case are paragraphs 9 to 12 and the same read as follows:

'9. In this regard, we draw inspiration from ratio in ***Malleeswari Vs. State Government, rep. By the Secretary to***



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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.

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.Sambandham / 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



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Hon'ble Division Bench of this Court, we drew inspiration from the same while writing *M.Shylaja's* case and we are informed that *Malleeswari* case is holding the field.

5. As three grounds raised in habeas corpus petitioner's campaign against the detention order find favour with us, we are inclined to allow the Habeas Corpus Petition i.e., accede to the prayer of the petitioner.

Apropos, the sequitur is the detention order dated 18.06.2022 bearing reference C.M.P.No.15/GOONDA/C2/2022 made by the second respondent is set aside and detenu Lallu @ Lalluprasath, son of Mr.Sekar (Late) is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
25.01.2023

Index:Yes/No
Neutral Citation : Yes
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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

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