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HCP No.1457 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1457 of 2022

M.Valarmathi
W/o.Manogaran
No.22, Kaliamman Koil Street
Virugambakkam, Chennai-600 092.

.. Petitioner

Vs.

1. The State of Tamil nadu
Rep. by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Chennai City, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police
R-5, Virugambakkam Police Station
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for

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issuance of a writ of habeas corpus to call for the records relating to the detenu's detention order passed by the 2nd respondent BCDFGISSSV No.114/2022 dated 12.05.2022 and set aside the same and produce the detenu Karthickraja, male, aged about 24 years, S/o.Manogaran, now detained in Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilkumar
representing Mr.S.Dhanasekar
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 and convenience] has been filed assailing a 'detention order dated 12.05.2022 bearing reference No.BCDFGISSSV No.114/2022' made by the second respondent [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The aforementioned 12.05.2022 detention order shall hereinafter referred to as 'impugned detention order' for the sake of convenience and clarity.

3. In and by the impugned detention order, one 'Mr.Karthickraja, Son



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of Manoharan, aged about 24 years with address at 76-A, Kaliamman Kovil Street, Virugambakkam, Chennai 600 092' [hereinafter 'detenu' for the sake of convenience and clarity] 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. To be noted, mother of the detenu is the petitioner in the captioned HCP.

5. Impugned detention order has been assailed *inter alia* on the following grounds:

- (i) It is unconstitutional;
- (ii) Normal criminal law will suffice as regards ground case and adverse case;



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- (iii) *Mala fide* exercise of power;
- (iv) Non-application of mind;
- (v) False case has been put up;
- (vi) The case relied on is not a similar case as regards imminent possibility of bail;
- (vii) Traffic dislocation has not been supported in the booklet supplied;
- (viii) Delay in making the detention order;
- (ix) Ground and adverse cases have been registered by the same police;
- (x) Ground case remand not intimated;
- (xi) Wound Certificate shows only simple injury;
- (xii) In the previous case, bail has been granted;
- (xiii) No endanger to public;
- (xiv) The same R-5 Virugambakkam Police Station registered the case;
- (xv) Extraneous conditions;



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6. Learned Additional Public Prosecutor who is instructed by fourth respondent is before us. Learned Additional Public Prosecutor submits that most of the cases against the detenu are in the nature of theft and the same has been by creating panic and terror. Learned Additional Public Prosecutor submits that there is no material to support *mala fide* allegation. The Sponsoring Authority, namely, fourth respondent has no axe to grind and *mala fide* ground is completely unjustifiable in his say. As regards delay in making the impugned detention order, it is submitted that it is only time consumed by procedure qua making the order considering the number of cases against the detenu. It was submitted that the arrest intimation in the ground case was duly communicated to the detenu's mother i.e., the petitioner.

7. We now consider the submissions one after the other. Grounds (iii), (v), (ix), (xiv) and (xv) fall in one basket as they turn on *mala fides*. For *mala fides*, there should be averment/s to show that the Sponsoring Authority namely, fourth respondent has an axe to grind. There is no



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whisper in HCP about any such axe to grind. Absent such averments, it cannot be presumed that there are *mala fides*. Therefore, these grounds do not find favour with us.

8. As regards public order, [grounds (i), (ii), (vii) and (xiii)] we remind ourselves the three concentric circles test / theory propounded by Hon'ble Supreme Court in celebrated ***Ram Manohar*** case law [***Ram Manohar Lohia vs. State of Bihar and another*** reported in ***AIR 1966 SC 740***]. Relevant paragraph is paragraph No.52 which reads as follows:

52. Both the aspects of the matter were again before this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia when dealing with the wording of clause (2) of Article 19 as amended by the Constitution (First Amendment) Act, 1951, it fell to be decided what “public order” meant. Subbarao, J. speaking for the Court referred to all earlier rulings and quoting from them came to the conclusion that “public order” was equated with public peace and safety and said:

“...Presumably in an attempt to get over the effect of these two decisions, the expression “public order” was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of Article 19....”

Summing up the position as he gathered from the earlier cases,



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the learned Judge observed:

“... “public order” is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State;”.

9. As regards moving from larger concentric circle of 'law and order' to the next smaller concentric circle of 'public order', the test is whether there is terror and panic in the minds of the public. A careful perusal of impugned detention order, more particularly four adverse cases cited therein

S.No.	Crime No.	Police Station	Sections
1.	811/2021	R-5 Virugambakkam Police Station	341, 294(b), 392, 511 IPC @ 341, 294(b) and 385 IPC
2.	747/2021	R-9 Valasaravakkam Police Station	341, 294(b), 307 and 506(ii) IPC
3.	882/2021	R-5 Virugambakkam Police Station	341, 294(b), 324 , 506(ii) IPC read with 34 IPC
4.	883/2021	R-5 Virugambakkam Police Station	427, 307, 506(ii) IPC @ 341, 324, 326, 427 and 506(ii) IPC

and ground case which was originally registered under Section 307 IPC and



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subsequently altered as Section 397 IPC wherein a vendor was waylaid and assaulted with a weapon with the intention of extracting money from him leaves us with the view that the subjective satisfaction of the Detaining Authority regarding public order being endangered cannot be found fault with and this is end of the road qua ground (vii) also.

10. The next point is delay in making the impugned detention order [ground (viii)]. As regards delay in making impugned detention order, we have already held in *M.Shylaja* case law [*M.Shylaja Vs. Additional Chief Secretary to Government and Others* (to be noted, neutral citation is **2023/MHC/193**)] that no number of days has been statutorily prescribed under Act 14 of 1982 for making the detention order qua ground case. The test is whether the 'live and proximate link' between the grounds of detention and purpose of detention has snapped. This has been elucidatively explained by Hon'ble Supreme Court in *Sushanta Kumar Banik's* case. To be noted, *Sushanta Kumar Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others*] arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act']



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for the sake of brevity] in Tirupura and the same is reported in **2022**

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LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333. As no number of days has been prescribed for a making 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. In the case on hand, the detenu was arrested and remanded to judicial custody in the ground case on 05.04.2022 and the impugned detention order has been made on 12.05.2022. Considering the material on record and the nature of the matter (ground case and adverse case particulars) we find that the case on hand passes muster as regards the live and proximate link between the grounds of detention and purpose of detention test. As regards Wound Certificate [ground (xi)] the matter turns on merits of the case and it is within the purview of the trial Court. We are exercising writ jurisdiction vide a constitutional provision, providing for habeas corpus and therefore we deem it appropriate to not to delve into those aspects of the matter and leave it to the trial Court. It is made clear that this view is taken in the facts and circumstances of the case.



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11. As regards imminent possibility of bail [grounds (vi) and (xii)] we find that similar case that has been relied on by the Detaining Authority is Crime No.275 of 2019 in G.3 Kilpauk Police Station. We find that this is also a case under Sections 341, 294(b), 323, 336, 397, 427 and 506(ii) of IPC and therefore it is clearly a similar case. More importantly, the petitioner himself has averred that bail petition has been moved and bail has been granted to the detenu in adverse cases and this is captured in Page Nos.61, 119 and 121 of the booklet. Therefore, even according to the petitioner's averments in HCP, there is imminent possibility of detenu being enlarged on bail.

12. As regards non-application of mind [ground (iv)], there is only a bare averment in HCP without any elaboration or buttressing averments. It is sweeping. To our mind, on a careful reading of the impugned detention order, we are unable to persuade ourselves to believe that there is non-application of mind on the part of the Detaining Authority in the case on



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hand.

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13. As regards the ground that it is unconstitutional [ground (i)] there is no elaboration. However, we went into this sweeping averment and suffice to say that we do not find any violation of constitutional safeguards ingrained in Article 22(5) of Constitution of India as Article 22(1) of Constitution of India is not applicable to preventive detention owing to Article 22(3)(b) of Constitution of India. We have already held that Section 8(1) of Act 14 of 1982 is a statutory expression (in numeric terms) of the constitutional safeguards ingrained in Article 22(5) of Constitution of India. Though there is no elaboration in HCP, to our mind there is no violation of constitutional safeguards in the impugned detention order. As regards normal criminal law would suffice in the case of detenu [ground (ii)] we have already delineated supra as to how the case on hand moves from first larger concentric circle of law and order to the second smaller concentric circle of public order and that by itself draws the curtains on this point also.

14. As regards arrest intimation, it is clear in the booklet in pages 359



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to 361 that arrest intimation has been communicated to petitioner. Page 361 contains the signature of the petitioner. A comparison of the signatures in the captioned HCP and the arrest intimation memo shows that the signatures are one and the same.

15. As regards wound certificate [ground (xi)] we do not propose to delve into merits of the ground case down to such granular details and leave it to the trial Court as the legal drill on hand is testing a habeas corpus prayer in writ jurisdiction.

16. We find no reason to interfere with the impugned detention order. The sequitur is, captioned HCP fails and the same is dismissed. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

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Speaking / Non-speaking
Neutral Citation : Yes / No
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