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H.C.P.No.1544 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1544 of 2022

Sadik Basha Yousuf
Son of Yousuf

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by the Secretary to the Government
Public (SC) Department
Fort St. George
Chennai-600 009.
2. Secretary to the Government of Tamil Nadu
Public (Law and Order) Department
Fort St. George
Chennai-600 009.
3. The Union of India
Rep. by the Secretary to the Government
Ministry of Finance
Department of Revenue (COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, VI Floor, 'B' Wing
Janpath, New Delhi - 110 001.

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4. The Superintendent of Central Prison
Central Prison, Puzhal, Chennai.

.. 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 relating to the detention order, in G.O.SR.1/5-8/2022, Public (SC) dept dated 16.06.2022 passed by the first respondent, quashing the same and directing the respondents to produce the body of the person of the detenu, Sadik Basha Yousuf, son of Yousuf now detained in the Central Prison, Puzhal, Chennai as COFEPOSA, detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.B.Satish Sundar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
R1, R2 and R4
Mr.R.Rajesh Vivekananthan
Deputy Solicitor General, for R3

ORDER

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

This order will now dispose of the captioned HCP.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the captioned HCP in the previous listings dated 07.02.2023 and 09.02.2023 which read as follows:

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Proceedings dated 07.02.2023

'Captioned 'Habeas Corpus Petition' ['HCP'] has been filed in this Court on 05.08.2022 assailing a detention order dated 16.06.2022 bearing reference G.O.No.SR.I/5-8/2022 made by the second respondent [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. This detention order shall hereinafter be referred to as 'impugned detention order' for the sake of convenience and clarity.

2. To be noted, impugned detention order has been made under Section 3(1)(i) and 3(1)(iii) of 'The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974)' [hereinafter 'COFEPOSA Act' for the sake of convenience]. The impugned detention order has been made on the basis of one solitary case. The date of occurrence is 28.12.2021 when the detenu was about to take a flight to Dubai from Chennai.

3. In his campaign against the impugned detention order, Mr.M.M.K.Alfudeen, learned counsel for petitioner submits that the 'live and proximate link' between grounds and purpose of detention has snapped as the solitary occurrence which is the substratum of the impugned detention order occurred on 28.12.2021(remanded to custody on 29.12.2021) but the impugned detention order has been made only on 16.06.2022. Learned counsel for petitioner points out that another point on which his campaign against impugned detention order is predicated is that there is a delay of 60 days in considering his



representation.

4. *Learned Additional Public Prosecutor, who is representing Respondents 1, 2 and 4 requests for a short accommodation to get instructions and responding to this argument of the learned counsel for petitioner.*

5. *Be that as it may, we find from the order sheet in the case file that Hon'ble predecessor Bench has ordered notice to third respondent returnable by 07.02.2023 vide proceedings made on 10.01.2023. Court notice has been sent but the fate is awaited. Learned counsel for petitioner submits that he has served on Deputy Solicitor General of India and requests for a short accommodation to file 'Affidavit of Service' ['AOS'].*

List day-after-tomorrow. List on 09.02.2023.'

Proceedings dated 09.02.2023

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.02.2023.

2. *Mr.M.M.K.Alfudeen, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondents 1, 2 and 4 are before us. Mr.R.Sanjay, learned counsel representing Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General is before us on behalf of third respondent.*

3. *Learned counsel for petitioner has filed an affidavit of service demonstrating that the third respondent has been duly served on 12.01.2023 itself.*



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4. Learned counsel for petitioner and learned State Additional Public Prosecutor are ready. Learned counsel representing learned Deputy Solicitor General for third respondent requests for short accommodation. Request for accommodation acceded to.

5. List on 14.02.2023.'

3. The aforementioned proceedings capture the crux and gravamen of the matter besides setting out the trajectory the captioned matter has taken before us. As the aforementioned proceedings shall be read as an integral part and parcel of this order, the short forms, abbreviations and short references used in the aforementioned proceedings shall continue to be used in the instant order also.

4. Adverting to the aforementioned proceedings dated 07.02.2023, Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondents 1, 2 and 4 submits that he has got instructions.

5. Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General for



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respondent No.2 has placed before us a counter affidavit.

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6. Mr.B.Satish Sundar, learned counsel on record for petitioner is before us.

7. We heard all the aforementioned counsel.

8. In the proceedings dated 07.02.2023, petitioner's live and proximate link between the grounds of detention and purpose of detention snapping that has been raised by petitioner's counsel in his campaign against impugned detention order has been captured. Three other points were raised and all the four points are as follows:

(i) Arrest was made on 29.12.2021 but the impugned detention order has been made only on 16.06.2022. This point has been raised in paragraph No.7(i) of HCP affidavit and it has been met in paragraph No.9 of counter affidavit of the Detaining Authority. Live and proximate link between the grounds of detention and purpose of detention snapping point



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has not been explained in the counter;

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(ii) A 'show cause notice' ['SCN'] dated 22.06.2022 was issued to the detenu *inter alia* under Section 124 of 'the Customs Act, 1962 (52 of 1962)' [hereinafter 'Customs Act' for the sake of brevity and convenience] and the detenu has sent a representation on 04.07.2022. SCN and reply were not placed before the Advisory Board. This has been raised in paragraph No.7(xiv) of HCP affidavit and it has been met in paragraph No.20 of counter affidavit of the Detaining Authority but it is vague;

(iii) Third point is, the detenu has sent a representation dated 04.07.2022 but there is delay in disposing of the representation as State Government has disposed of the same only on 02.08.2022 and Central Government has disposed of the representation only on 23.08.2022. Counter affidavits do not explain this delay adequately;

(iv) Fourth point pertains to Tamil translation of two



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vital documents in the grounds of detention not being given to the detenu. In this regard, learned counsel for petitioner submitted that the literacy level of the detenu is only class 8 in school, his mother tongue is Tamil and he is conversant only with Tamil. Continuing in above direction, learned counsel draws the attention of this Court to Assayer's report at page Nos.20 and 21 of the booklet wherein valuation of alleged contraband has been set out and page Nos.30 and 31 of the booklet which are inventory of goods detained / seized. These have not been furnished in Tamil. It is pointed out that there is no dispute on this aspect of the matter by the State.

9. The response of learned Additional Public Prosecutor to the aforesaid points are as follows:

(i) Adverting to paragraph No.9 of counter affidavit of the Detaining Authority, learned Additional Public Prosecutor submitted that live and proximate link between the grounds of detention and purpose of detention has not snapped. It was



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submitted that several documents were sought for from customs authorities and substantial time was taken for the same being furnished;

(ii) As regards second point, paragraph No.20 of the counter affidavit was reiterated;

(iii) As regards the third point, advertent to paragraph No.23 of counter affidavit of Detaining Authority and referring to chronicle therein, learned Additional Public Prosecutor submitted that there is no delay. As regards delay on the part of Central Government, advertent to paragraph No.6 of counter affidavit filed by third respondent, learned Deputy Solicitor General submitted that there is no delay in the light of averments contained therein;

(iv) As regards the fourth point which pertains only to the Detaining Authority, learned Additional Public Prosecutor, advertent to paragraph Nos.15 and 20 at Page Nos.18 and 20 of the counter affidavit submitted that the detenu is a frequent traveler and this really a non-starter. To be noted, this point is



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not canvassed qua the third respondent as it is a question of translation in the grounds. Adverting to paragraph No.12 of counter affidavit, it was submitted by learned Additional Public Prosecutor that the detenu has traveled to several countries and therefore, this point is unsustainable;

10. As regards learned Deputy Solicitor General, he supported the contentions of learned Additional Public Prosecutor. To be noted, the submissions of learned Deputy Solicitor General on specific points have been captured while setting out the rival stated position supra.

11. We now proceed to consider the four points one after the other.

12. Paragraph No.7(i) of HCP affidavit, wherein live and proximate link between the grounds of detention and purpose of detention snapping point raised reads as follows:

'7(i) The customs officers are alleged to have seized the diamonds / gems from me on 28.12.2021 and I am alleged to have given confessional statement on the same day. Though the alleged



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offence took place on 28.12.2021 and the necessary documents came into existence immediately thereafter and the last document was my bail order dated 17.02.2022 the detention order was not passed against me immediately. But on the contrary, the detaining authority has passed the detention order against me only on 16.06.2022 after an inordinate and unreasonable delay of 6 months. During this period I am not alleged to have committed any similar smuggling activities and therefore there is no proximity or nexus between the alleged offending act and the detention order. Due to the long lapse of time, the alleged incident has become stale and the live link is snapped. That apart, the detaining authority, before issuing the detention order, has not applied his mind to the subsequent events and materials. Thus there is no fresh application of mind by the detaining authority at the time of passing the detention order. Therefore the inordinate and unreasonable delay of nearly 6 months in passing the detention order vitiates the detention itself.'

Answer to this by the Detaining Authority in paragraph No.9 of the counter affidavit of the Detaining Authority reads as follows:

9. It is humbly submitted that as far as the averment made in paragraph 7(i) of the affidavit, the following facts are submitted before this Hon'ble Court:-



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- (i) The proposal dated 10.02.2022 from the Principal Commissioner of Customs, Airport Commissionerate, Chennai to detain Thiru Sadik Basha Yousuf was received by the First Respondent on 14.02.2022. When the proposal was scrutinized by the Government, certain deficiencies were found. Hence, a letter in No.SR.1/5-1/2022 dated 17.02.2022 were sent to the Principal Commissioner of Customs, Chennai Commissionerate (Airport), Chennai with request to send the following documents :-

- i. Annexure – I in Seizure Memo
- ii. Passenger Manifest of Emirates Flight No. EK543/03.30 hours dated 28.12.2021
- iii. Forwarding memo of Goods detained under Mahazar
- iv. Arrest intimation given to the family members of Thiru Sadik Basha Yousuf.
- v. Initial Remand order and subsequent Remand extension order of Thiru Sadik Basha Yousuf
- vi. Last Court order extending the remand of Thiru Sadik Basha Yousuf
- vii. Residential search, if any, made and details thereof
- viii. Documents on previous offence booked vide No.CH892/2019 for an amount of Rs 8,61,504 with details
- ix. Documents relating to his previous frequent visits to various countries.
- x. Photograph of Thiru Sadik Basha Yousuf and address proof
- xi. Copy of the Passport
- xii. All the supporting documents in Tamil
- xiii. Draft grounds



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- (ii) The Principal Commissioner of Customs, Airport Commissionerate, Chennai in his letter dated 25.02.2022 had furnished the above documents and informed that efforts had been taken to translate the supporting documents into Tamil and the same will be furnished after the translation work is done.
- (iii) The above documents received on 25.02.2022 were scrutinised along with the original proposal dated 10.02.2022. After scrutiny the Principal Commissioner of Customs, Chennai Commissionerate (Airport) was again requested on 09.03.2022 to send the following further documents to process the case:-
- (i) Documents relating to the details of the Judicial custody of the Petitioner/detenu for the period from 13.01.2022 to 22.02.2022.
- (ii) As the native of Thiru. Sadik Basha Yousuf is given in the proposal as Thondi, Ramanathapuram District, whether the accused is appearing daily before the Superintendent of Custom, Prosecution – Air, Chennai as per the order dated 17.02.2022 of Learned Judicial Magistrate Court, Special Court for Customs Act, Alandur to appear before the Superintendent of Custom, Prosecution-Air for 30 days. If the accused is appearing daily, then the temporary residential address, if any, of the accused.
- (iii) Documentary evidence like Baggage Tag No., etc. that the Petitioner/detenu has carried the bag 'JING PIN' with him where the diamonds have been concealed.
- (iv) Documentary proof of off-loading of the Petitioner/detenu and his baggage from Flight No.EK543.



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- (iv) The Principal Commissioner of Customs, Chennai Commissionerate (Airport) was further requested to send the translated version of supporting documents in Tamil early to process further.
- (v) The Principal Commissioner of Customs, Chennai Commissionerate (Airport) in his letter dated 15.03.2022 furnished the above documents and it was received on 16.03.2022. In the above letter, the Principal Commissioner of Customs, Chennai Commissionerate (Airport) has further stated that efforts are taken to translate the supporting documents into Tamil and the same will be furnished after the translation work is done. The Principal Commissioner of Customs, Chennai Commissionerate (Airport) was also reminded on 29.03.2022 to send the translated version of the documents.
- (vi) In the meantime, the original file was sent on 21.03.2022 to the Advisory Department in Secretariat for remarks.
- (vii) The Advisory Department returned the file on 29.03.2022 for clarification.
- (viii) The file was again sent to the Advisory Department on 07.04.2022 with the clarification.



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- (ix) In the meantime, the Assistant Commissioner of Customs, R&I-Airport Commissionerate in his letter dated 18.04.2022 has sent part of translated version of supporting documents which was received by the First Respondent on 20.04.2022.
- (x) The Advisory Department on 21.04.2022 has given concurrence to proceed further against the Petitioner/delena under COFEPOSA Act, 1974.
- (xi) Based on the documents received from the Principal Commissioner of Customs, the draft grounds for the detention of the Petitioner/delena was prepared and it was sent to the Translation Department on 27.04.2022 for the translated version of the grounds in Tamil. The Principal Commissioner of Customs (Airport) was also requested on 27.04.2022 to send the complete set of certified copies of documents both in English and Tamil with proper indexing.
- (xii) The translated version of draft grounds for detention in Tamil was received on 09.05.2022. Subsequently vetting/scrutiny of the draft order, draft grounds and supporting documents all both in English and Tamil were finalised.
- (xiii) The Principal Commissioner of Customs, Chennai Commissionerate (Airport) was requested on 25.05.2022 to send five set of properly indexed certified copies of the documents taken in single side after incorporating certain suggestions made by the Government.



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- (xiv) Finally after due process the file was submitted for orders on 07.06.2022 and after orders, it was circulated to the competent authority for approval on 10.06.2022. The file was approved on 11.06.2022 and the detention order was issued on 16.06.2022.

Hence, the time taken in issuing the detention order is purely administrative in nature. The Petitioner/detenu was arrested by the Customs on 29.12.2021 and based on the order dated 17.02.2022 of the Learned Judicial Magistrate, Special Court for Custom Act, Alandur, he was released on bail on 23.02.2022 and appeared before the Superintendent of Customs, Prosecution-Air till 31.03.2022. As he was previously punished on 18.12.2020 for similar activity by the Customs and was a frequent traveller, the instant case relating to the smuggling of diamonds was further processed and detention order under the COFEPOSA ACT was issued on 16.06.2022 to curtail his illegal activity. Therefore, it is humbly submitted that the proposal for his detention was processed carefully in each and every stage before issuing the detention order. Hence, there was no delay in issuing detention order against the Petitioner/detenu as alleged in the Petition.



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To be noted, this point arises only qua Detaining Authority. We have carefully considered the rival stated positions. The impugned detention order has been made after a lapse of more than five and half months. Most recent case in this regard is **Banik's** case i.e., **Sushanta Kumar Banik Vs. State of Tripura & others** reported in **2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333**. To be noted, **Banik** case law arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tirupura, wherein after considering the trajectory the matter took, Hon'ble Supreme Court came to the conclusion that 'live and proximate link between the grounds and purpose of detention snapping' point should be considered on a case to base basis. Another aspect of the matter is, it has been elucidated that this point has two facets. One facet is 'unreasonbale delay' and the other facet is 'unexplained delay'. We carefully considered the stand of the Detaining Authority which has been articulated in paragraph No.9 of counter affidavit which has been extracted and reproduced supra. We find that this articulation pertains only to the correspondence between the Detaining Authority and Sponsoring Authority and we also find that the matter has



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been shuttling i.e., going back and forth for collection of materials.

Therefore, this by itself demonstrates that the ground case has become stale.

When the ground case becomes stale, the live and proximate link between the grounds of detention and purpose of detention snaps. We find that the delay is not only unreasonable, it also remains unexplained. Therefore, the delay i.e., live and proximate link between the grounds of detention and purpose of detention snapping point succeeds on both facets as articulated in **Banik's** case by Hon'ble Supreme Court. In this regard, learned counsel pressed into service a judgment of Hon'ble Supreme Court in **Adishwar Jain case [Adishwar Jain Vs. Union of India and another]** rendered on 19.10.2006. A careful perusal of **Adishwar Jain** case brings to light that **Adishwar Jain** case arose under COFEPOSA Act . The facts are identical and five and half months delay in making the impugned detention order was held to be fatal qua detention order in that case. Therefore, we are accepting the first point. Though accepting the first point itself is good enough to dislodge the impugned detention order, we deem it appropriate to deal with other three points also.



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13. The next point turns on SCN, reply and the same not being placed before the Advisory Board. This is adequately articulated by the petitioner in paragraph No.7(xiv) of HCP affidavit which reads as follows:

'7(xiv) The detenu submits that a show cause notice dated 22.06.2022 under Section 124 of the Customs Act was issued by the customs department and served to the detenu through the 4th respondent in the prison and the detenu sent a reply to the show cause notice dated 7/16-7-022 to the customs authorities who are none other the sponsoring authority through his counsel. The reply was received by the customs authorities on 18.07.2022. But the show cause notice and the reply to the show cause notice were not placed before the Advisory Board. Non placing of the above documents before the Advisory Board vitiates the detention itself.'

Answer to this in paragraph No.20 of the counter affidavit of the Detaining Authority reads as follows:

'20. It is humbly submitted that as far as the averments made in paragraph 7(xii), 7(xiv) and 7(xvii) of the affidavit, all the essential documents that were relied upon for passing detention order against the detenu had been supplied to him with due acknowledgment.'



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We carefully considered the answer of the Detaining Authority. We have no hesitation in saying that this is hardly an answer to the point that has been raised. Paragraph No.20 of the counter affidavit merely says that all essential documents that were relied on for passing detention order against the detenu had been supplied to him with due acknowledgment. Therefore, we have no difficulty in holding that this is no answer to a point that has been raised with specificity i.e., the point that SCN and reply were not placed before the Advisory Board.

Be that as it may, it is deemed appropriate to add that this Hon'ble Court has held in ***Rahamath Nisha*** case [***Rahamath Nisha Vs. The State of Tamilnadu and two others in HCP (MD) No.755 of 2011 and M.P(MD) No.1 of 2011***], ***Elizabeth Rani*** case [***Elizabeth Rani Vs. The State of Tamil Nadu and two others in HCP No.2088 of 2008***] and ***Rani*** case [***R.Rani Vs. State of Tamil Nadu and two others in HCP No.1164 of 2001***] that SCN and reply to SCN not being placed before Advisory Board is fatal and is certainly a ground to dislodge the impugned detention order. Therefore, we accept the second point also.



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14. This takes us to the third point i.e., delay in considering the representation. The detenu / petitioner has sent a representation dated 04.07.2022. As regards the State Government disposing of this only on 02.08.2022, paragraph No.23 of counter affidavit of the Detaining Authority is relevant and the same reads as follows:

23. As far as the averments made in paragraph 7(xiii) of the Affidavit, it is submitted that, the representation of the Petitioner/detenu dated 04.07.2022 sent to the Government through the Superintendent, Central Prison, Chennai, has been considered and rejected by the First Respondent, in the following way, without any undue delay :

- | | |
|--|------------|
| 1) Representation of the detenu dated 04.07.2022, received by the Government on | 08.07.2022 |
| 09.07.2022 (Saturday) and 10.07.2022 (Sunday) | Holidays |
| 2) Parawar remarks called for from the Sponsoring Authority on | 11.07.2022 |
| 3) Remarks from the Sponsoring Authority received by this Department on | 19.07.2022 |
| 4) Remarks called for from the Detaining Authority on | 21.07.2022 |
| 23.07.2022 (Saturday) and 24.07.2022 (Sunday) | Holidays |
| 5) Remarks received from the Detaining Authority on | 25.07.2022 |
| 6) Circulation note was put up on | 25.07.2022 |
| 7) Under Secretary to Government Public (Law & Order) Department, considered the representation on | 29.07.2022 |
| 8) Special Secretary to Government Public Department, considered the representation on | 29.07.2022 |
| 9) Secretary to Government Public Department, considered the representation on | 29.07.2022 |



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11) Secretary to Government. Law Department considered the representation on	27.07.2022
12) Chief Secretary to Government considered the representation on	28.07.2022
30.07.2022 (Saturday) and 31.07.2022 (Sunday)	Holidays
13) The Hon'ble Minister for Law, considered the representation on	01.08.2022
14) The Hon'ble Chief Minister considered the representation and Rejected on	02.08.2022
15) Reply letter sent to the detenu on	02.08.2022
Thus, from the date of receipt of representation of the detenu in the Department, on 08.07.2022, until its disposal on 02.08.2022, excluding Government holidays for eight days, the representation has been disposed of within 17 working days without any undue delay	

A careful perusal of paragraph No.23 supra, which is a chronicle of sorts i.e., dates and events makes it clear that parawar remarks were called for from the Sponsoring Authority on 11.07.2022 and the Sponsoring Authority has responded only on 19.07.2022. This 10 days delay clearly remains unexplained, not to say of the other delays at various other stages. Therefore, we have no difficulty in coming to the conclusion that there has



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been delay in considering the representation of the petitioner by the State Government. As regards the Central Government, the representation has been disposed of on 23.08.2022 and the answer to this is in paragraph Nos.6 and 7 of the counter affidavit of the third respondent which read as follows:

'6. I submit that the representation dated 04.07.2022 addressed to the Secretary, Ministry of Finance, New Delhi submitted by the petitioner through the Superintendent, Central Prison, Puzhal, Chennai was received on 18.07.2022 by the Ministry. The information on the said representation was sought from both the Sponsoring Authority i.e., Commissioner of Custom (Airport), Chennai on the same day i.e., 18.07.2022. The requisite information was received only on 26.07.2022 from the Sponsoring Authority and that from the Detaining Authority only on 01.08.2022. While forwarding the said information, the State Government also informed that the case has already been referred to the State Advisory Board on 11.07.2022 and the meeting of the Advisory Board was fixed for 01.08.2022.

7. I humbly submit that in view of the above facts, the said representation dated 04.07.2022 was kept pending for want of report / opinion of the Advisory Board as per the law laid down by the Hon'ble Supreme Court in Criminal Appeal No.829/2015 (Gulam Biswas Vs. Union of India & Others) and W.P. (Crl.) No.362 of 2019 (Ankit Ashok Jain Vs. Union of India & Ors.)'



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We are of the view that the argument that the Government was waiting for the report of Advisory Board does not really weigh with us. The reason is, consideration of the representation or making a representation against a preventive detention order is a Constitutional safeguard ingrained in Article 22(5) of Constitution of India. We are conscious of the fact that we are not dealing with punitive detention but we are dealing with preventive detention. We are dealing with HCP which is a high prerogative writ. To put it in simple terms, preventive detention is not a punishment. Therefore, we find that the Constitutional safeguard ingrained in clause (5) of Article 22 of Constitution of India qua detenu who has suffered incarceration in the case on hand owing to delay on the part of State and Central Governments in disposing of the representation also enures to the benefit of the petitioner in his campaign against the impugned detention order.

15. This takes us to the fourth point which obviously is directed only against the Detaining Authority. As regards the fourth point is concerned,

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the stated positions of the petitioner and the State have been captured supra.

Therefore, we refrain ourselves from restating the same. Suffice to say that by way of answer to this, paragraph Nos.15 and 20 of the counter affidavit of Detaining Authority read as follows:

'15. It is humbly submitted that as far as the averment made in paragraph 7(vii) of the affidavit, the documents mentioned by the detenu are only the details of valuation of jewellery and inventory of goods detained / seized and a basic English knowledge is enough to understand the details. Further the above details had been explained by the authorities in the Central Prison, Puzhal, Chennai and he has also acknowledged it. Moreover, the petitioner has already presented a representation dated 04.07.2022 in English and he has signed the said representation in English. Hence, it is clear that he can write and understand English very well. Therefore, the averment made by the petitioner has no merit.

20. It is humbly submitted that as far as the averments made in paragraph 7(xii), 7(xiv) and 7(xvii) of the affidavit, all the essential documents that were relied upon for passing detention order against the detenu had been supplied to him with due acknowledgment.'

A careful perusal of the stated position as regards non furnishing of Assayer's report which is a valuation of purported contraband qua interception of the petitioner on 28.12.2021 (remanded to custody on



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29.12.2021) and inventory of goods detained / seized brings to light one point clearly. There is no dispute, disagreement or contestation that Tamil translations were not given to the detenu. Likewise, there is no dispute or disagreement that the literacy level of the detenu is only class 8 in school. Therefore there is no dispute that the detenu is conversant only with his mother tongue i.e., Tamil. In this backdrop, the argument that the detenu could have taken the help of a lawyer is hardly convincing. Law is well settled that the translation of the grounds of detention in a language the detenu is conversant has to be provided to the detenu and this is imperative. To be noted, this is a facet of Constitutional guarantee ingrained in Article 22(5) of Constitution of India. In certain Statutes like Act 14 of 1982, this Constitutional guarantee has been statutorily codified in numeric terms also by saying that the grounds of detention has to be furnished to the detenu within five days from the date of detention order. To be noted, this is vide Section 8(1) of Act 14 of 1982. In this regard, learned counsel for petitioner pressed into service ***Daku Devi*** case [***Daku Devi vs State of Tamil Nadu and another***] being order dated 21.09.2004 made by Hon'ble Division Bench of Madras High Court in H.C.P.No.590 of



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2004. A careful perusal of **Daku Devi** case brings to light that this case arose under COFEPOSA and that was also a case of alleged carrying of contraband by the detenu. In this **Daku Devi** case, the point that Tamil translation of vital documents have not been supplied was raised. Adverting to this, a Hon'ble Division Bench, repelled the contention of the State that the detenu knew English in that case and held that the detenu in that case had specifically sought for copies in Hindi but that was not given. In the case on hand, there is no dispute that the detenu has specifically sought for Tamil translation of the documents. We are also convinced that two documents pointed out by learned counsel for petitioner are certainly vital as one is a valuation i.e., valuation of purported contraband and the other is inventory of goods seized at the time of interception. This being vital documents and literacy level of the detenu being class 8 in school, in the light of **Daku Devi** case rendered by Hon'ble Division Bench, we have no hesitation in coming to the conclusion that there is infringement of the detenu's constitutional rights to make an effective representation under Article 22(5) of Constitution of India in the light of Tamil translation of vital documents not being given in Tamil i.e., mother tongue over which the detenu is



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conversant. As the campaign of the petitioner on all the four points i.e, petitioner's campaign against the impugned detention order are sustained, impugned detention order deserves to be dislodged.

16. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.06.2022 bearing reference G.O.No.SR.I/5-8/2022, Public (SC) Department made by the second respondent is set aside and the detenu Thiru.Sadik Basha Yousuf, son of Late Yousuf is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

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

(M.S.,J.) (M.N.K.,J.)
14.02.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal.



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To

WEB COPY

1. The State of Tamil Nadu
Rep. by the Secretary to the Government
Public (SC) Department
Fort St. George
Chennai-600 009.
2. Secretary to the Government of Tamil Nadu
Public (Law and Order) Department
Fort St. George
Chennai-600 009.
3. The Union of India
Rep. by the Secretary to the Government
Ministry of Finance
Department of Revenue (COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, VI Floor, 'B' Wing
Janpath, New Delhi - 110 001.
4. The Superintendent of Central Prison
Central Prison, Puzhal, Chennai.
5. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and



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M.NIRMAL KUMAR, J.,

mk

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14.02.2023

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