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H.C.P.No.1624 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.1624 of 2022

R.Pacheiamman,
S/o.Ravichandran
No.1007, Pallavan Street
Akash Nagar, Kovur
Chennai-600 122.

.. Petitioner

Vs.

1. State Represented by its
Home Secretary to the Govt. of Tamil Nadu
Home Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Chennai City
E.V.K.Sampath Salai
Vepery, Chennai.
3. The Inspector of Police
E-3, Teynampet Police Station
Chennai.



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4. The Superintendent of Prison
Central Prison-II
Puzhal.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in relating to the order of detention passed by the 2nd respondent dated 07.05.2022 in BCDFGISSSV No.108 of 2022 against the detenu Thiru.Ganesan @ Jayapal, Male, aged 32 years, S/o.Ravichandran who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.T.Perinbanathan
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 convenience and clarity] has been filed in this Court on 16.08.2022 assailing a 'detention order dated 07.05.2022 bearing reference BCDFGISSSV No.108/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent. To be noted, third respondent is the Sponsoring Authority.

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2. In and by the impugned detention order, the detenu 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].

3. Short facts are that the detention order refers to one ground case and that one ground case is Crime No.110 of 2022 for alleged offences under Sections 341, 294(b), 323, 307 and 506(ii) of 'Indian Penal Code' ['IPC'] on the file of the third respondent police station. The sum and substance of the ground case has been captured in impugned detention order and a perusal of the same shows that when the complainant and his friend were riding a two wheeler back home on 30.03.2022, detenu intercepted them, a wordy duel ensued and it appears to have turned into a tussle regarding who is more powerful in a given area.



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4. Owing to the legal perimeter of the case on hand, we deem it appropriate to not to dilate further on facts.

5. Though very many averments have been made in the affidavit in support of HCP, Mr.T.Perinbanathan, learned counsel on record for petitioner projected two points which find favour with us. Discussion and dispositive reasoning on the same are as follows:

(i) The similar case that has been relied on (paragraph No.3 of the impugned detention order) by the Detaining Authority to come to the conclusion that there is imminent possibility of the detenu being enlarged on bail is not really a similar case is the plea. A perusal of the detention order shows that the similar case relied on is Crime No.145 of 2018 on the file of F-2 Egmore Police Station in the case of one Thiru.Stephen @ Stephenraj. Even according to the detention order, it is for alleged offences under Sections 341, 294(b), 323, 336, 427, 307 and 302 of IPC whereas the case on hand as already alluded to supra is only for offences under Sections



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341, 294(b), 323, 307 and 506(ii) of IPC. In response to this plea, Mr.R.Muniyapparaj, learned Additional Public Prosecutor attempted to say that the similar case is a more serious offence. Though this may be factually correct, we are unable to accept the argument as the test is whether the two cases are comparable. In other words, it should not be a case of comparing Apples and Oranges or Cheese and Chalk. In this view of the matter, the similar case that has been relied on in the impugned detention order by the Detaining Authority for coming to the conclusion that there is imminent possibility of the detenu being enlarged on bail is not really a similar case. Therefore this point finds favour with us.

(ii) The second point that finds favour with us also turns on imminent possibility of the detenu being enlarged on bail. In the case on hand, the detenu has not moved any bail application and we are informed that there are seven previous cases as against the detenu. Learned counsel for petitioner submits that chances of bail for the detenu are bleak and



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therefore imminent possibility is a far cry or in other words, a mirage. Learned Additional Public Prosecutor, in response to this submission stated that seven previous cases are indeed pending against the detenu but the possibility of bail cannot be ruled out. This, in our view, is not a case of possibility of bail but it is a case of 'imminent' possibility of the detenu being enlarged on bail. As already alluded to supra, in the case on hand, admittedly no bail application has been moved by the detenu and therefore, we are persuaded to believe that imminent possibility of bail qua detenu for making the impugned detention order is a mirage.

(iii) The third point that finds favour with us is the 'live and proximate link' between grounds of detention and purpose of detention being snapped. We have repeatedly held starting from *M.Shylaja* case law [*M.Shylaja Vs. Additional Chief Secretary to Government and Others (Neutral Citation of this Court : 2023/MHC/193)*] that no time limit has been fixed under Act 14 of 1982 for making the detention order. This



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means that there is nothing numeric or speaking statutorily, there is nothing numeric with regard to the time limit codified for making the detention order under Act 14 of 1982. What has to be tested is whether the 'live and proximate link' between the grounds of detention and purpose of detention has snapped. In the case on hand, in the aforementioned ground case, the detenu was remanded to judicial custody on 01.04.2022 and he remains incarcerated. The impugned detention order was made while he remained incarcerated but it was made only on 07.05.2022 more than five weeks later. As we have repeatedly held that the question is whether the 'live and proximate link' between the grounds and purpose of detention has snapped has to be tested on case to case basis. In the case on hand, only one ground case has been referred to and we are unable to persuade ourselves to believe that the detention order was made when the live and proximate link was alive or in other words, when it had not become stale. Therefore, this ground also finds favour with us. To be noted,



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with regard to this ground, learned Additional Public Prosecutor submitted that it is only the time consumed by the procedure in making the impugned detention order. This does not find favour with us in the case on hand as facts are fairly simple and it does not really require collation of materials.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.05.2022 bearing reference BCDFGISSSV No.108/2022 made by the second respondent is set aside and the detenu Thiru.Ganesan @ Jeyapal, Son of Ravichandran is directed to set at liberty forthwith, if not required in connection with any other case/s.

7. Captioned HCP ordered on the above terms.

(M.S.,J.)

(M.N.K.,J.)

27.01.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

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5. The Public Prosecutor
High Court, Madras.



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

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