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H.C.P.No.1636 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.1636 of 2022

Krishnan

..

Petitioner /
detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St.George, Secretariat, Chennai – 600 009
2. The Commissioner of Police
Office of the Commissioner of Police
Greater Chennai
Chennai – 600 007
3. The Superintendent of Prison
Central Prison at Puzhal II
Chennai District – 600 066
4. The Inspector of Police
E-1, Mylapore Police Station, Chennai

... Respondents



H.C.P.No.1636 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records in Detention order in B.C.D.F.G.I.S.S.S.V No.190 of 2022 dated 09.07.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner detenu Krishnan, son of Bedmala Sharma aged 44 years now confined in Central Prison at Puzhal II before this Court and set him at liberty.

For Petitioner : Mr.M.Mohammed Saifulla

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Sylvester John
Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 09.07.2022 bearing reference Memo No.190/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by the second respondent.



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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.201 of 2022 on the file of E-1, Mylapore Police Station for alleged offences under Sections 363, 365, 457 and 380 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Mohammed Saifulla, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.



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5. Though very many grounds have been urged/raised in the support affidavit qua captioned Habeas Corpus Petition, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on two main points and they are as follows:

a) 'Live and proximate link between the grounds of detention and purpose of detention' has snapped as petitioner was arrested on 08.05.2022 but the impugned detention order has been made only on 09.07.2022.

b) Translated copy of remand extension order (relied on by the detaining authority) has not been provided in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to pages 307 and 308 of the booklet which is Remand Extension Order dated 01.07.2022. No Hindi translation of this document has been furnished to the detenu.

6. Learned Prosecutor submitted to the contrary and a summation of the submission of the Prosecutor are as follows:

a) As regards 'live and proximate link between the purpose of



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detention and grounds of detention' having snapped, the same has been raised by the habeas corpus petitioner in ground (viii) of the support affidavit and the same reads as follows:

'(viii) That the detenu was arrested on 08.05.2022 and the said detention order was passed on 09.07.2022. The detention order was passed an inordinate delay which amounting to violation of his personal rights.'

The response is in paragraph 12 of the counter affidavit of the second respondent (Detaining Authority), which reads as follows:

'12. I respectfully submit that the averments made in paragraph Ground (viii) of the affidavit, is not correct. Considering the criminal activities of the detenu in the double murder case, the sponsoring authority has initiated a proposal for the preventive detention of the detenu. After completely reading the proposal, affidavit and support documents placed before the Detaining Authority by the Sponsoring Authority and after coming to the subjective satisfaction, the Detaining Authority has passed the order of detention of the Detenu as Goonda on



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09.07.2022 in accordance with law.'

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Adverting to the counter affidavit, learned Prosecutor submitted that the time consumed in making the impugned preventive detention order, can be countenanced.

(b) As regards the translation of the remand extension order dated 01.07.2022, the same being a matter of record before us, learned Prosecutor really does not have much of a say but he submitted that there is a possibility of the detenu jumping jurisdiction.

7. Before we proceed further we deem it appropriate to set out our dispositive reasoning on the aforementioned two points raised by the Prosecutor and they are as follows:

a) As regards 'live and proximate link between grounds of detention and purpose of detention' snapping, we find that date of arrest is 08.05.2022 whereas the impugned preventive detention order has been made only on 09.07.2022, more than two months later. The explanation articulated in Paragraph 12 of



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the counter affidavit of the second respondent (Detaining Authority) is hardly convincing as it merely says that Sponsoring Authority initiated a proposal and after complete reading of the proposal and supporting documents placed before the Detaining Authority, the impugned preventive detention order came to be made. Learned counsel for the petitioner also fairly drew our attention to paragraph 7 of the counter affidavit of the second respondent and a careful perusal of the same shows that it only talks about complete reading of the proposal, affidavit and supporting documents but no other special circumstances have been demonstrated. There is nothing really on record to show that live and proximate link between the grounds of detention and purpose of detention has snapped. Therefore, ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***] operates in all fours qua case on hand. However, learned Prosecutor in addition to the above argument, pointed out that the first respondent (Government) has filed a



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separate counter affidavit (counter affidavit dated 15.03.2023).

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Learned Prosecutor drew our attention to Paragraphs 4 to 7 of the counter affidavit. We are not extracting and reproducing the same as we do not propose to burden this order with this extract. Suffice to say that a careful perusal of these paragraphs only brings to light that the trajectory the matter has taken before the Detaining Authority in the preventive detention order being made. The trajectory the matter has taken can hardly be a ground to explain the live and proximate link snapping point. Therefore, we are not inclined to accept this submission for sustaining the impugned preventive detention order and reiterate that **Banik** principle applies in all fours to case on hand.

b) As regards the translation, as already alluded to supra, it is a matter of record but the submission of the prosecutor regarding the detenu jumping the jurisdiction can hardly be a ground to defend a preventive detention order as such an argument would tantamount to saying that preventive detention law can be weaponized to detain a detenu who is facing trial. Be



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that as it may, we are informed that the literacy level of the detenu is V Standard and he is a school drop out. We are also informed that the detenu is conversant only with Hindi. We remind ourselves of Powanammal case i.e., **Powanammal Vs. State of Tamil Nadu**, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which a Hon'ble Bench of the Supreme Court answered this question is captured in paragraph 16. To be noted, Powanammal case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16 {as in SCC journal} read as follows:

'6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she



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is required to be detained in any other case. The appeal is accordingly allowed.'

In the case on hand, we find that Remand Extension Order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Hindi, the lone language the detenu is conversant with, has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Be that as it may, we are informed on instructions that trial is underway and the charge sheet has been filed well within time. This means that the detenu is not entitled to default bail under Section 167(2) of Cr.P.C. It is well open to the Prosecutor to oppose the bail plea if made in the trial Court and if such a course is adopted, it is clearly a matter of discretion of the learned Sessions Judge qua the bail petition by considering the same on



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its own merits and in accordance with law uninfluenced by this order which is being made for the limited purpose of dislodging the impugned preventive detention order. In this regard, we remind ourselves that public order and law and order are two different phenomena and impugned preventive detention order being dislodged by this order turns on public order leaving law and order proceedings unimpeded by this order.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.07.2022 bearing reference Memo No.190/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Krishnan, aged 44 years, son of Thiru.Bedmala Sharma 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.

(M.S.,J.)

(K.G.T.,J.)

05.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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

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To

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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