



H.C.P.No.1939 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.1939 of 2022

Aslam Hussaini
S/o.Gafrool

... Petitioner

Vs.

1. The Addl. Chief Secretary to Government
Home, Prohibition and Excise
Secretariat
St. George Fort
Chennai – 600 009

2. The Commissioner of Police
Commissioner Office
Vepery
Chennai – 600 007

3. The Superintendent of Police
Central Prison, Puzhal II
Puzhal
Chennai – 600 066

4. The Inspector of Police
N-1, Royapuram Police Station
Royapuram
Chennai – 600 013

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention Order No.197/BCDFGISSSV/2022 dated 13.07.2022 passed by the 2nd respondent, set aside the same and to produce the petitioner's brother-in-law Mr.Wasime Basha, aged about 34 years, son of Mr.Mahabu Basha, the detenu now confined in Central Prison, Puzhal II, Puzhal Chennai and set him at liberty.

For Petitioner : Mr.K.Subburaj

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.M.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 brother-in-law of detenu assailing a 'preventive detention order dated 13.07.2022 bearing reference 197/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 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.299 of 2022 on the file of N1 Royapuram Police Station was initially registered for an alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered to 302, 201, 109 and 380 of IPC. 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.K.Subburaj, 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. Before we plunge into the matter, it is necessary to set out the proceedings made by this Court in H.C.P.No.1876 of 2022 in the listing on 29.03.2023 and the same reads as follows:

'When the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was taken up, Mr.K.Subburaj, learned counsel for petitioner, as a first point argued that live and proximate link between the grounds of detention and avowed purpose of detention has snapped as date of arrest of detenu is 13.05.2022 and the detention order was made by the Detaining Authority on 13.07.2022. Elaborating on this, learned counsel submitted that the ground case which is the solitary case and which is the sole substratum of the impugned detention order had become stale as on the date of the impugned detention order. Learned counsel also pointed out that this ground has been articulated as part of Ground 2 of support affidavit which reads as follows:

'2.Therefore there was an inordinate unexplained delay in passing the order of detention order by the detaining authority and the same is liable to be quashed by this Hon'ble Court.'

2. The Detaining Authority i.e., second respondent has filed a counter affidavit, learned Prosecutor adverting to the same submitted that the aforementioned portion of Ground 2 has been met in Paragraph 8 of the counter affidavit and the same reads as follows:

' 8. I respectfully submit that the averments made in



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Paragraph Ground (2) of the affidavit filed in support of the Petition that there is inordinate delay in passing the order of detention. The detenu and her associates were arrested on 14.05.2022 and remanded to judicial custody. Considering the grave crime committed by the detenu and his associates, the Sponsoring Authority has initiated a proposal for the detention of the detenu as Goonda. After careful reading of the proposal, the Detaining Authority has passed the order detention of the detenu as Goonda under the Tamil Nadu Act 14 of 1982 on 13.07.2022.'

*3. When this Court pointed out that the time consumed in making impugned preventive detention order has not been adequately explained, learned counsel submitted that impugned detention order is dated 13.07.2022 which is prior to **Sushanta Kumar Banik's case [Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333]**, which was rendered by a three member Bench of Hon'ble Supreme Court on 30.09.2022. Owing to this submission, it was pointed out that live and proximate link between grounds of detention and purpose of detention snapping point was not propounded for the first time in Banik's case. It was also pointed out that it had been propounded earlier i.e., at least as early as on 11.12.1978 in **Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another** reported in (1979) 1 SCC 465 and attention of learned Prosecutor was drawn to Paragraph 6 thereat, which reads as follows:*

'6. It is true that the purpose of detention under the COFEPOSA is not punitive but preventive. The purpose is to prevent organised smuggling activities and to conserve and augment Foreign Exchange. It is true that the maximum period for which a person may be detained under the



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COFEPOSA is one year. It is further true that there must be a “live and proximate link” between the grounds of detention alleged by the detaining authority and the avowed purpose of detention, namely, the prevention of smuggling activities. We may in appropriate cases assume that the link is “snapped” if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the “link” not snapped but strengthened. That, precisely, is the state of affairs before us. The order of detention was made on December 19, 1974. The detenu was found to be absconding. Action was taken pursuant to Section 7 of the COFEPOSA and he was proclaimed as a person absconding under Section 82 of the Criminal Procedure Code. The proclamation was published in several leading English and local language daily newspapers. His photograph was exhibited in cinema halls. A reward of Rs 5000 was also announced for his apprehension. Despite all this effort he could not be arrested until he surrendered on February 1, 1978. We do not have any hesitation in overruling the submission of Shri Jethmalani based on the delay in the execution of the order of detention.'

4. Faced with the above situation, learned Prosecutor requested for a short accommodation to file an additional counter explaining this point. We make it clear that counter shall be restricted to explaining this live and proximate link snapping point alone.

5. Learned Prosecutor requests for one week. Request acceded to. Let learned Prosecutor favour the counsel for petitioner



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with an advance copy.

List one week hence. List on 05.04.2023.'

6. It is also necessary to extract the proceedings dated 29.03.2023 in the captioned HCP, which reads as follows:

'Read this in conjunction with and in continuation of separate proceedings made in H.C.P.No.1876 of 2022.

2. Post the captioned HCP along with H.C.P.No.1876 of 2002 and H.C.P.No. 2197 of 2022 on 05.04.2023.'

7. Pursuant to the aforementioned proceedings, today learned Prosecutor submitted that an additional counter affidavit has been filed. It is not necessary to go into the point urged as all that is captured in the previous proceedings which shall now be read as an integral part and parcel of this order.

8. Adverting to additional counter affidavit, more particularly paragraph 6 thereat, learned Prosecutor submitted that a DNA test was sought and then the forensic science lab report dated 27.06.2022 was received only on 28.06.2022. We find that this can at best qualify as a possible explanation for delay in filing charge sheet in the trial Court but it does not qualify as a ground explaining the point in petitioner's campaign



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against the impugned preventive detention order i.e., the point that 'live and proximate link' between the ground of detention and purpose of detention had snapped. Therefore, we have no difficulty in saying that the argument of the petitioner on this 'live and proximate link' snapping point is acceptable and it is good enough to dislodge the impugned preventive detention order.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.07.2022 bearing reference 197/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Wasim Basha, aged 34 years, son of Thiru.Mahabu Basha 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.)

(D.N.R.,J.)

06.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

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

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5. The Public Prosecutor
Madras High Court, Chennai



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