



WEB COPY



H.C.P.No.1889 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.1889 of 2022

Ravichandran

.. Petitioner

Vs.

- 1.State of Tamil Nadu
rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -600 009.
- 2.The Commissioner of Police,
Office of Commissioner, Tambaram Range,
Sholinganallur, Chennai - 119.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
W-5, All Women Police Station,
Selaiyur, Chennai – 73.

.. 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 detention order passed in Memo No.131/BCDFGISSSV/2022 dated 30.08.2022 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu i.e., the body of Nishanth, S/o.Ravichandran, male, aged about 32 years, the detenu detained under Act 14 of 1982 in detention order Memo No.131/BCDFGISSSV/2022 dated 30.08.2022 herein now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.



WEB COPY



H.C.P.No.1889 of 2022

For Petitioner : Ms.R.Subadra Devi
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by father of the detenu assailing 'detention order dated 30.08.2022 bearing reference BCDFGISSSV No.131/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.

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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.



H.C.P.No.1889 of 2022

3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.663 of 2022 on the file of Pallikaranai Police Station for alleged offences under Sections 406, 420, 354-D, 376 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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. Ms.R.Subadra Devi, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for all respondents are before us.

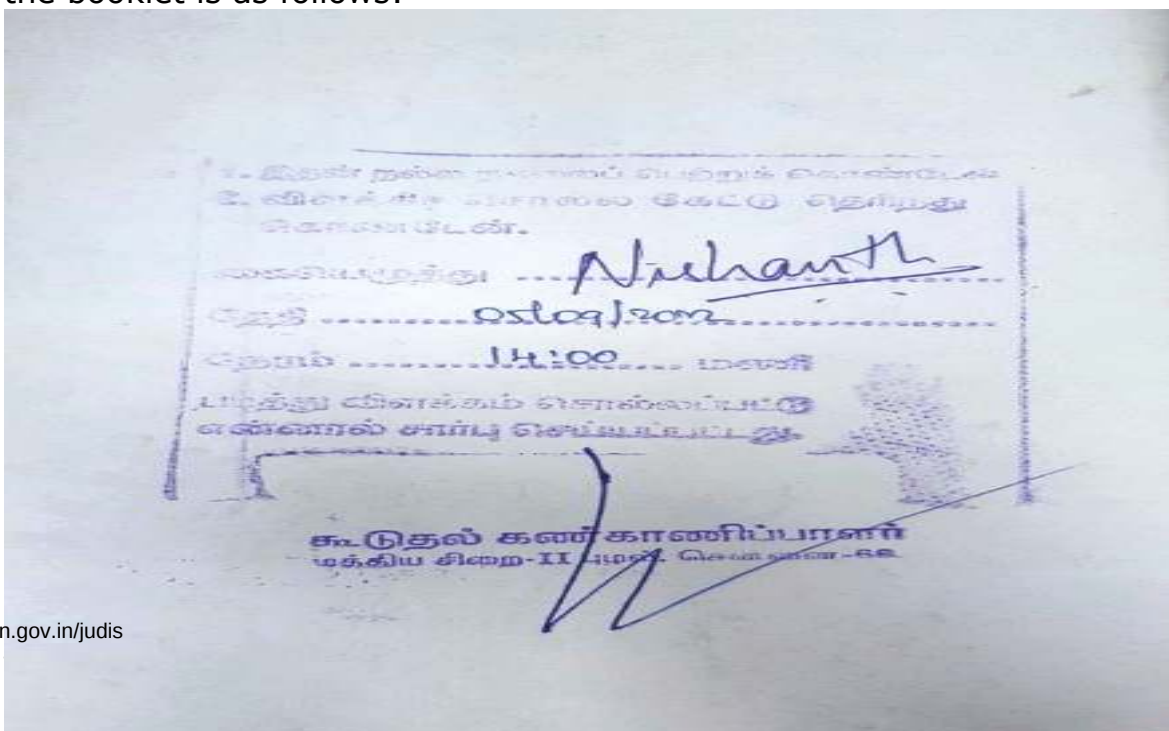
5. In the support affidavit, very many points/grounds have been urged/raised but two points find favour with us and therefore we would set out those two points infra and refrain from legal drill of examining the other points.

6. The first point urged by learned counsel for petitioner is that there is infraction/violation of Section 8(1) of Act 14 of 1982 as the ground on which the detention order has been made has not been communicated to the detenu within five days from the date of detention



H.C.P.No.1889 of 2022

(To be noted, the grounds have been served to the detenus by the prison authorities in the form of a booklet and therefore the same shall be referred to as 'booklet'). Adverting to the aforementioned provision of law, learned counsel submitted that the date of detention order and detention pursuant to preventive detention order is dated 30.08.2022, it was served on the detenu on the same day i.e., on 30.08.2022. The point is, the 'grounds on which the impugned preventive detention order has been made' was served on the detenu in the form of a booklet [hereinafter 'grounds booklet' for the sake of convenience] only on 05.09.2022. Learned counsel submits that this is a clear infraction of the statutory requirement qua Section 8(1) of Act 14 of 1982 and such infraction of a statutorily imperative requirement is fatal qua impugned preventive detention order is learned counsel's further say. We perused the grounds booklet and a scanned reproduction of the typical page in the booklet is as follows:





H.C.P.No.1889 of 2022

7. One point that arises for consideration is whether the date of detention should be included or excluded in computing this 5 days. To be noted, the date of detention in the case on hand is 30.08.2022 as already alluded to supra. We are of the view that the date of detention has to be included for computing this 5 days and the reason for us to say so unhesitatingly is the ratio / principle laid down by Hon'ble Supreme Court in **Kapil Wadhawan's** case being **Enforcement Directorate, Government of India vs. Kapil Wadhawan and another** vide order dated 27.03.2023 in Crl.A.Nos.701-702 of 2020. While answering a reference on the question as to whether date of remand is to be excluded or included for computing 60/90 days qua section 167(2) Cr.P.C. default bail, Hon'ble Supreme Court vide a detailed order declared that date of remand has to be included for computing 60/90 days. We are conscious that this **Kapil Wadhawan** pertains to remand but we are of the view that inspiration can be drawn from this case law also as remand is also curtailment of liberty as much as and akin to preventive detention order being curtailment of liberty though former is followed by trial for an alleged offence said to have been committed unlike latter which is not followed by trial and is for an offence which the detaining authority considers to be likely to be committed by the detainee. In **Kapil Wadhawan's** case, the relevant paragraphs are paragraphs 6 and 50 which read as follows:



'6. The core issue that arises for consideration is whether the date of remand is to be included or excluded, for considering a claim for default bail, when computing the 60/90 day period as contemplated in proviso (a) of [Section 167\(2\)](#) of the [Cr.P.C.](#) The moot question has been considered by this Court in various cases, but there is a divergence of opinion on how the stipulated period, for the right of default bail, accruing to the accused, is to be computed. Some judgments have favoured the exclusion of date of remand, while a contrary view is taken in other cases.

*50. Since there exists vacuum in the application and details of [Section 167](#) Cr.P.C., we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the charge sheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the charge sheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the charge sheet. In *Ravindran(supra)* and *Bikramjit (supra)*, which followed the Constitution Bench in *Sanjay Dutt(supra)* it was rightly held that if the accused persons avail their indefeasible right to default bail before the charge sheet/final report is filed, then such right would not stand frustrated or extinguished*



H.C.P.No.1889 of 2022

by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under [Section 167 Cr.P.C.](#) ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under [Section 167 Cr.P.C.](#) In cases where the charge sheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an infeasible right to default bail accrues to the accused.'

8. The aforementioned ratio which has been laid down by Hon'ble Supreme Court speaks for itself very eloquently. It is very clear that the date of detention has to be included. This means that 'not later than five days' expression occurring under Section 8(1) of Act 14 of 1982 would mean that it cannot be later than 04.09.2022. In the case on hand, the grounds on which the impugned preventive detention order was made was admittedly served on the detenu only on 05.09.2022. Therefore, there is no difficulty in coming to the conclusion that there is infraction of Section 8(1) of Act 14 of 1982.

9. Dealing with infraction of Section 8(1) of Act 14 of 1982, this Bench in the case of **M.Shylaja Vs.The Additional Chief Secretary to Government and others** reported in **2023/MHC/193** has held



H.C.P.No.1889 of 2022

that such infraction would lead to dislodgement of impugned preventive detention order.

10. The second point turns on 'live and proximate link' between the grounds of detention and purpose of detention as date of remand in the ground case is 09.07.2022 but the impugned detention order has been made only on 30.08.2022.

11. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public Prosecutor is unacceptable.

12. We remind ourselves of **Sushanta Kumar Banik's** case [**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 proposal by the Sponsoring Authority and after noticing the



H.C.P.No.1889 of 2022

trajectory the matter took, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be examined on a case to case basis. Hon'ble Supreme Court has held in **Banik** case law that this point has two facets. One facet is 'unreasonable delay' and other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

13. To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/733, Sangeetha Vs. The Secretary to the Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and a series of other orders in HCP cases.



H.C.P.No.1889 of 2022

14. Therefore we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in the case on hand.

15. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 30.08.2022 bearing reference BCDFGISSSV No.131/2022 made by the second respondent is set aside and the detenu Thiru.Nishanth, aged 32 years, son of Thiru.Ravichandran is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (R.S.V.,J.)
02.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -600 009.
- 2.The Commissioner of Police,
Office of Commissioner, Tambaram Range,
Sholinganallur, Chennai - 119.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.



H.C.P.No.1889 of 2022

4.The Inspector of Police,
W-5, All Women Police Station,
Selaiyur, Chennai – 73.

5.The Public Prosecutor,
High Court of Madras, Chennai - 104.



WEB COPY



H.C.P.No.1889 of 2022

**M.SUNDAR, J.
and
R.SAKTHIVEL, J.**

mmi

H.C.P.No.1889 of 2022

02.06.2023