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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No. 1948 of 2022

Mahendran
S/o. Ramaiya

.. Petitioner/Brother of detenu

-VS-

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruppur
3. The Superintendent of Police,
Central Prison
Coimbatore
4. The Superintendent of Police
Superintendent of Police Office
Tiruppur



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5. The Inspector of Police
Avinasipalyam Police Station
Tiruppur

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records relating to the petitioner's brother detention order Tamil Nadu Act 14 of 1982 vide Detention Order, dated 01.09.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.59/Drug Offender/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother, namely Murugan, son of Ramaiya, aged 42 years before this Court, now lodged in Central Prison, Coimbatore and set him at liberty.

For Petitioner	..	Mr.M.Subash for Mr.Deepan Uday
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.M.Sylvester John Advocate



ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by brother of detenu assailing a 'preventive detention order dated 01.09.2022 bearing reference Cr.M.P.No.59/Drug Offender/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.



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3. There is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.297 of 2022 on the file of Avinashsipuram Police Station for alleged offences under Sections 273 and 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Sections 7(1) and 20(2) of Cigarette and Other Tobacco Products Act, 2003. 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.Subash, learned counsel representing the 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.

5. Notwithstanding various averments in the support affidavit, the primary ground urged by the 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 (To be noted, the grounds



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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').

6. In response to the aforementioned grounds raised by the learned counsel for petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of all the respondents submitted that the grounds of detention are being signed by the Detaining Authority in the late hours and therefore, some allowance has to be given.

7. We have perused the materials placed before us and also considered the rival submissions.

8. We remind ourselves that preventive detention is not a punishment as held by Honourable Supreme Court in the oft quoted *Ashok Kumar's* case i.e., ***Ashok Kumar V. Delhi Administration and Ors.*** reported in **(1982) 2 SCC 403**.

9. As regards the point urged by the petitioner that grounds on which the detention order has been made has not been communicated to the detenu, the same turns on section 8(1) of Act 14 of 1982. A careful reading of Section 8(1) leads to the inevitable conclusion that it is a facet of the Constitutional guarantee *qua* Article 22(5) of the Constitution of India.



Section 8(1) of Act 14 of 1982 reads as follows:

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'8. Grounds of order of detention to be disclosed to persons affected by the order.-(1) When a person is detained in pursuance of a detention order, the Authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

10. Therefore, the contention of learned Additional Public Prosecutor cannot be countenanced since detention order was passed on 01.09.2022 at 16.40 hours and it was served on the detenu only on 06.09.2023 and the detaining authority arrived at the subjective satisfaction based on the materials produced by the Sponsoring Authority.

11. In this view of the matter, we have no hesitation in coming to the conclusion that there has been delay, as already alluded to and captured supra, the detenu was arrested on 11.08.2022 and remanded to custody sequentially and they continue to be in detention upto 09.09.2022. It is also noted that when the detention order was made on 01.09.2022, the detenu was in State custody. In this view of the matter, it is imperative to look on



what have referred to as booklet supra. A scanned reproduction of the booklet is as follows:

தமிழ் உயர்நீதிமன்றம்

அ. எண்.	பொருள்	பொது	பக்க எண்
தீர்ப்பளிப்பு மரபுப்படி அறிமுகப்படுத்தப்பட்ட பரணை தீர்மானம், 207/2022 ச.சி.ஐ.நி.டி 273, 320 இடத்தில் தரப்பட்டிருக்கிறது. 11/11/2021 அம்மதி. மருத்துவ குறைபாடுகளைப் பற்றி தீர்மானம் எண். 2003.			
01.	முதல் பரணை தீர்மானம்	மதிப்பு	01-04
02.	முதல் பரணை : முடிவு	மதிப்பு	05-05
03.	சமீபத்தில் பரணை : 11/08/2022 / 15:15 மணி	மதிப்பு	07
04.	முதல் பரணை : மதிப்பீடு	மதிப்பு	08-09
05.	சமீபத்தில் பரணை : 11/08/2022 / 17:15 மணி	மதிப்பு	10
06.	பரணை : மதிப்பு	மதிப்பு	11
07.	மதிப்பீடு : மதிப்பு	மதிப்பு	12
08.	பரணை : மதிப்பு	மதிப்பு	13
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தீர்மானம் எண். 2003



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12. It is clear that grounds of detention *qua* the impugned detention order has been communicated to the detenus only on 06.09.2022 though the detention orders was made on 01.09.2022 on which day the detenu was already under detention i.e., State custody. It is a clear violation of Section 8(1) of Act 14 of 1982 i.e., the Act under which preventive detention order has been clamped on the detenu. As already alluded to supra, Section 8(1) being a facet of Article 22(5) of the Constitution of India, Section 8(1) is statutorily imperative for ensuring the constitutional guarantee of giving an earliest opportunity to the detenu to make a representation to the State. It is also to be noted that this is ingrained in the second part of Section 8 which has been extracted and reproduced supra.

13. This aspect of the matter was dealt with by this Bench on 19.01.2022 in the case of ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in ***2023/MHC/193***. This case was decided by us *inter alia* by drawing inspiration from ***Malleeswari*** case [***Malleeswari Vs. State Government, rep. By the Secretary to Government and another*** reported in ***(2011) 1 MLJ (Crl) 513***]. Relevant paragraphs in



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M.Shylaja case are paragraphs 9 to 12 and the same read as follows:

'9. In this regard, we draw inspiration from ratio in **Malleeswari Vs. State Government, rep. By the Secretary to Government and another** reported in (2011) 1 MLJ (Crl) 513, wherein a Hon'ble Division Bench of this Court has held that delay in supplying copy of detention order, grounds and connected papers to the detenu i.e., delay beyond 5 days from the date of detention is clearly violation of Section 8(1) of Act 14 and that by itself becomes a ground to make an order setting aside the detention. To be noted, in **Malleeswari** case also, the detention was under Act 14 albeit as a 'Goonda' and detenu was in prison.

10. We notice one other feature and that is in all the detention orders, the provision of law has been mentioned as Section 2(ggg), whereas it is Section 2(1)(ggg) of Act 14 of 1982 as detention is posited on 'sexual offenders' but leave this issue open in this order as it is not clear if it is a misprint in this book titled 'A Handbook of Preventive Laws' [October 2021, Third edition] by S.Samandham / V.S.Rajaram and published by C.Sitaraman & Co. Pvt. Ltd., as Gazette publication of ordinance [Ordinance 1 of 1982 published in Tamil Nadu Government Gazette on 05.01.1982] does not have sub-section (1).

11. With regard to custodial jurisprudence, in **Pattammal Vs. District Magistrate and Collector Nagai and Others** reported in 1995(1) CTC 335, which is also under Act 14 of 1982, a Hon'ble Division Bench of this Court dealing with detention

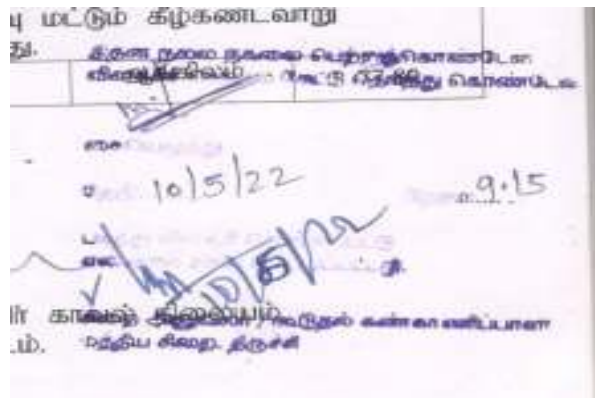


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under Act 14 has held that Section 8 of Act 14 of 1982 is intended to confer a right for detenu qua an opportunity to make a representation against an order of detention.

12. We have noticed that the language in which Section 8 of Act 14 of 1982 is couched makes it clear that 'not later than five days' is from the date of detention. In the cases on hand, the detenues were already under detention. This is one facet of the matter. Another facet of the matter is, on detention orders being made, preventive detention of the detenus operates and in the cases on hand, the grounds of detention have been served beyond five days from the date of detention orders. A scanned reproduction of undisputed seal of the prison authorities in one of the cases [HCP No.1182 of 2022] as an illustration is as follows:



To be noted, **Malleeswari** case was rendered by another Hon'ble Division Bench of this Court, we drew inspiration from the same while writing **M.Shylaja's** case and we are informed that **Malleeswari** case is holding the field.



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This by itself decides i.e., dispositive reasoning *qua* the point raised by the petitioner in favour of the HCP petitioner.

14. Apropos the sequitur of the discussion and dispositive reasoning set out supra is that the captioned HCP is allowed, the impugned detention order bearing reference Cr.M.P.No.59/Drug Offender/2022 dated 01.09.2022 made by the second respondent is set aside and the detenu Thiru. Murugan, aged 42 years, son of Thiru.Ramaiya is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs in these cases.

[M.S., J.] [M.N.K., J.]

29.03.2023

Index: Yes

Neutral Citation : Yes

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



To

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1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George
Chennai – 600 009
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruppur
3. The Superintendent of Police,
Central Prison
Coimbatore
4. The Superintendent of Police
Superintendent of Police Office
Tiruppur
5. The Inspector of Police
Avinasipalyam Police Station
Tiruppur apattinam District.
6. The Public Prosecutor,
High Court, Madras.



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

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