



H.C.P.No.2012 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.2012 of 2022

Mrs.Vijayalakshmi

..

Petitioner /
wife of detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate of Kancheepuram
Kancheepuram District
Kanchipuram
3. The Superintendent of Police
Kanchipuram
Kanchipuram District
4. The superintendent
Central Prison
Puzhal, Chennai

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5. State rep. By
The Inspector of Police
Siva Kanchi Police Station
Kancheepuram

... Respondents

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 connection with the order of detention passed by the 2nd respondent dated 12.09.2022 in Memo Rc.No.12776/2022/M6-D.O.No.37 of 2022 against the petitioner husband, Kadhar @ Sheik Kadhar, Male, aged 36 years, son of Saleem who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	:	Mr.A.Saranraj
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 wife of the detenu assailing a 'preventive detention order dated 12.09.2022 bearing reference Rc.No.12776/2022/M6-D.O.No.37 of 2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases. The ground case which constitutes a substantial part of the substratum of the impugned detention order is Crime No.414 of 2022 on the file of Siva Kanchi Police Station for alleged offences under Sections 341, 294(b), 323, 324, 506(ii) and 307 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 more into the factual matrix or be detained further by facts.



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4. Mr.A.Saranraj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor (assisted by learned counsel Mr.Sylvester John), for all respondents are before us.

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

a) The detenu voluntarily surrendered on 04.07.2022 and a formal arrest in the ground case was made on 20.07.2022 but the impugned preventive detention order has been made only on 12.09.2022, more than two months later and therefore, the live and proximate link between grounds of detention and purpose of detention has snapped. In support of this argument, learned counsel pressed into service oft-quoted ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***];



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b) As regards imminent possibility of detenu being enlarged on bail, the impugned preventive detention order relies on a bail order dated 17.02.2022 made in CrI.M.P.No.224 of 2022 in one Senthilkumar's case and this bail order has been annexed to the grounds booklet at page Nos.411 to 417. Senthilkumar's case is one where learned Prosecutor himself submitted before the Court that there are no bad antecedents. To be noted, the aforementioned two points have been raised as grounds 7 and 8 in the habeas corpus petition support affidavit and the same read as follows:

'vii) The detaining authority failed to see that the detenue was surrender before the Judicial Magistrate Court Alangulam on 04.07.2022 but the 2nd respondent passed the detention order on 12.09.2022 delay in passing the detention order was not mentioned in the detention order.

'viii) I respectfully submit that the detenue have not filed bail petition in the ground case and adverse cases before the component court and the above said bail petition was not filed at the time of passing the detention order, as such there is no



imminent and real possibility of coming of jail. As the bail petition was not filed the detaining authority on mere presumption that the detenue likely coming out of jail detained him in a mechanical manner which is not maintainable at the sight of law.'

6. In response to the aforementioned two points, learned Prosecutor submitted to the contrary and his submissions are as follows:

a) Learned Prosecutor submitted that the co-accused was absconding and that had led to consumption of time in making the impugned preventive detention order;

b) As regards the imminent possibility of detenu being enlarged on bail, learned Prosecutor drew our attention to a statement made by detenu's wife being statement dated 30.08.2022, which is at page 393 of the booklet (to be noted this a 161(3) Cr.P.C statement) . Relying on this, learned Prosecutor submitted that the detenu's wife had categorically stated that she would be consulting her lawyer and taking steps for moving bail applications for the detenu.

Learned Prosecutor submitted that the aforementioned points have



been articulated in Paragraphs 14 and 15 of the counter affidavit of the State and drew our attention to the same. Paragraphs 14 and 15 of the counter affidavit reads as follows:

'14) I submit that the averments made in Ground (vii) of the Affidavit is false and incorrect. I submit that the detenu surrendered on 04.07.2022 in Vishnu Kanchi Police Station Crime / number 1753/2021, before the Judicial Magistrate Court, Alangulam and then the detention order was passed on 12.09.2022 is not a delay and not a violation of law since the detention passed by the Detaining Authority should be properly verified by the competent authorities. Also relevant bureaucratic formalities should be fulfilled before making the detention. Hence the averment that there is delay in making the detention is absolutely unacceptable.

15) I submit that the averments made in Ground (viii) of the Affidavit is false and incorrect. I submit that the detenue had not filed bail petition in ground case at the time of passing the detention order. But one Tmt.Vijayalakshmi w/o the detenu had given a statement u/s.161(3) Cr.PC on 30.08.2022 that due to their family circumstances they had not filed a bail petition in the above case on behalf of her husband and in due course of time she would file a bail petition before an appropriate court after making consultation with her counsel.



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As such he files a bail petition at his earliest then there is a real chance and possibility on the part of the detenu for getting released on bail. Hence the allegation is totally unsustainable.'

7. We carefully considered the rival submissions. We now proceed to set out our discussion and give our dispositive reasoning qua two points that have been urged before us in petitioner's campaign against the impugned preventive detention order.

8. As regards the first point, the dates speak for themselves. We find that the detenu voluntarily surrendered on 04.07.2022 and there was a formal arrest on 20.07.2022 but the impugned preventive detention order has been made two months later on 12.09.2022. The explanation as set out in paragraph 14 (extracted and reproduced supra) merely says that the delay is not a violation of law as the Detaining Authority had to verify with the competent authorities before making the impugned preventive detention order. It has also been mentioned that relevant bureaucratic formalities had to be fulfilled in making the impugned preventive detention order. This



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explanation is hardly convincing. Hon'ble Supreme Court has repeatedly held in a long line of case laws from ***Bhawarlal Ganeshmalji v. State of Tamil Nadu*** reported in (1979) 1 SCC 465 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] that it is not a question of numeric expression or quantitative expression of number of days in making the preventive detention order but it is a qualitative consideration of whether the live and proximate link between the grounds of detention and purpose of detention' have snapped.

9. We have repeatedly followed ***Banik's*** case vide ***Gomathi Vs. The Principal Secretary to Government and others*** (Neutral Citation of Madras High Court being 2023/MHC/334), ***Sadik Basha Yusuf Vs. The State of Tamil Nadu and others*** (Neutral Citation of Madras High Court being 2023/MHC/733), ***Sangeetha Vs. The Secretary to the Government and others*** (Neutral Citation of Madras High Court being 2023:MHC:1110), ***N.Anitha Vs. The Secretary to Government and others*** (Neutral Citation of Madras High Court being 2023:MHC:1159) and a series of other orders in HCP cases.



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10. If we apply the *Banik* principle to the case on hand, we find that the explanation is hardly convincing. We are constrained to say that it is no explanation at all as it says that it is merely a case of bureaucratic formalities. Preventive detention is not a punishment. We remind ourselves that while preventive detention is not a punishment, habeas corpus is a high prerogative writ as held in *A.K.Gopalan's* case [*A.K.Gopalan Vs. The District Magistrate, Malabar and another* reported in 1949 Crl LJ 843]. Therefore, we have no hesitation in sustaining the argument of the habeas corpus petitioner that the impugned preventive detention order is liable to be dislodged on the ground that the live and proximate link between grounds and purpose of detention has snapped.

11. Though the petitioner succeeds on one point, as another point has also been canvassed before us, we deem it appropriate to discuss and give our dispositive reasoning on the second point also. The second point turns on imminent possibility of detenu being enlarged on bail. There is no doubt that a statement from the detenu's wife saying that she would be consulting lawyers and taking steps for moving bail petition has been obtained. The



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point is not whether the detenu's immediate family member is taking steps.

The point is the manner in which detaining authority has arrived at the subjective satisfaction qua imminent possibility of the detenu being enlarged on bail. After setting out (in paragraph 5 of the impugned preventive detention order) that the detenu's wife is taking steps to move a bail application, the Detaining Authority has relied on Senthilkumar's case (order in CrI.M.P.No.224 of 2022 dated 17.02.2022 on the file of District and Sessions Judge, Kancheepuram) to say that it is similar to the adverse and ground cases qua the impugned preventive detention order. Therefore, there is imminent possibility of detenu being enlarged on bail.

12. We carefully perused the Senthilkumar's case which is at page Nos.411 to 417 of the grounds booklet. We find that the most relevant portion of the bail order made by the learned Sessions Judge is contained in paragraph 7 and the same reads as follows:

'....this petitioner also has no bad antecedent even according to the prosecution and hence, the benefits given to the co-accused by the Hon'ble High Court can be extended to this petitioner also....'



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13. As rightly pointed out by the learned counsel for the petitioner, the prosecution itself has pointed out that there is no bad antecedents and that has impelled the learned Sessions Judge to exercise the discretion in favour of the petitioner in Senthilkumar's case in granting bail under Section 439 of the 'Code of Criminal Procedure, 1973 (Act No.2 of 1974)' [hereinafter 'Cr.P C' for the sake of convenience and clarity] . Therefore, the comparison of Senthilkumar's case with ground and adverse cases is clearly a case of comparing Apples and Oranges or in other words, it is a case of comparing cheese and chalk. We find that comparison is bad, which means that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is clearly impaired. The sequitur is impugned preventive detention order deserves to be dislodged.

14. Therefore, captioned HCP is allowed. Impugned detention order dated 12.09.2022 bearing reference Rc.No.12776/2022/M6-D.O.No.37 of 2022 made by the second respondent is set aside and the detenu Thiru.Kadhar @ Sheik Kadhar, aged 36 years, son of Thiru.Saleem is



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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.)

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Index : Yes

Speaking

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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Siva Kanchi Police Station
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6. The Public Prosecutor
Madras High Court, Chennai



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