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H.C.P.No.2036 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2036 of 2022

Jaibunisha
W/o.Sharfudheen

.. Petitioner/
Wife of detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Kallakurichi District
Kallakurichi
3. The Superintendent of Police
Kallakurichi District
4. The Superintendent
Central Prison, Cuddalore
5. The Inspector of Police
Chinnasalem Police Station
Kallkurichi District

... Respondents

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H.C.P.No.2036 of 2022

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 passed by the second respondent pertaining to the order in D.O.No.C2/53/2022 dated 15.09.2022 detaining the detenu under 2(f) of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu Sharfudheen, son of Anwar Basha, aged about 38 years, who is detained at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.G.Nirmal Krishnan
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 detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference D.O.No.C2/53/2022' [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.

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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.236 of 2022 on the file of Chinnasalem Police Station for an alleged offence under Sections 147, 148, 294(b), 323, 324, 332, 336, 353, 435, 436, 379 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Sections 3, 4 and 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. 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. S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public



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Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

5. To be noted, though several grounds have been raised/urged in the support affidavit qua captioned HCP, in the hearing Mr.S.Senthilvel, learned counsel who is before us on behalf of counsel on record for petitioner posited/predicated his campaign against the impugned detention order on two points and they are as follows:

i) The first point is regarding Tamil translation of the bail order in similar case has not been provided and the literacy level of the detenu is low. In this regard, learned counsel submitted that the case of a co-accused was allowed on the same point vide order dated 29.03.2023 in H.C.P.No.1921 of 2022.

ii) The second point turns on delay in considering the representation made qua impugned detention order.

6. As regards the first point we deem it appropriate to say that the case of the co-detenu being allowed vide H.C.P.No.1921 of 2022 in and by order dated 29.03.2023 has been reported in **2023:MHC:1566** and the same reads as follows:



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H.C.PNo.1921 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.PNo.1921 of 2022

Dakshnamurthy
S/o.Kalian

.. Petitioner /
Father of the detenu

Vs.

1. The State of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise Department
Fort St George
Chennai - 600 009
2. The District Magistrate and District Collector
Kallakurichi District
Kallakurichi
3. The Superintendent of Police
Kallakurichi District
Kallakurichi
4. The Superintendent of Central Prison
Central Prison, Vellore
Vellore District
5. The Inspector of Police

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H.C.P.No.1921 of 2022

Chinna Salem Police Station
Kallakurichi
Kallakurichi District
(Crime No.236 of 2022)

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in D.O.No.C2/44/2022 dated 28.08.2022 passed by the District Collector and District Magistrate, Kallakurichi District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Sanjeev, son of Dakshnamurthy, aged 22 years, now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner

Mr R Sankarasubbu

For Respondents

Mr R Muniyappanaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the father of detenu assailing a 'preventive detention order dated 28.08.2022 bearing reference D.O.No.C2/44/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is

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the detaining authority as the 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 is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.236 of 2022 on the file of Chinnasalem Police Station for an alleged offence under Sections 147, 148, 294(b), 323, 324, 332, 336, 353, 435, 436, 379 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Sections 3, 4 and 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Owing to the nature

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

5. Notwithstanding very many averments and grounds raised in the support affidavit, in the hearing Mr.R.Sankarasubbu, learned counsel for petitioner predicated his campaign against the impugned detention order on three points and they are as follows:-

a) As regards the subjective satisfaction of detaining authority qua imminent possibility of detenu being enlarged on bail qua paragraph 5 of the impugned detention order, the detaining authority has said that the Sponsoring Authority received reliable information that his relatives are taking steps to file bail application but there is no statement from the relatives. To put it differently, there is nothing to buttress what has been described as 'reliable information'.

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b) As regards the same subjective satisfaction, Sponsoring Authority has relied on an order dated 23.03.2023 made in C.M.P.No.2447 of 2020 on the file of the Sessions Court, Villupuram vide Crime No.144 of 2020 for alleged offences under Sections 147, 148, 294(b), 448, 323, 324, 506(ii) IPC read with Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act of Ulundurpet Police Station but this really is not a similar case as the ground case turns on offences under Sections 379, 436, 435, 353, 336 and 332 of IPC also;

c) The aforementioned order of the Sessions Court has been given in the grounds booklet as an annexure. It is at page 76, it is in English but a Tamil translation has not been provided. Learned counsel submitted that detainee has difficulty in understanding legal language in which the bail order is couched and therefore it has impaired his constitutional safeguard to make an effective representation against the impugned preventive detention order;

6. In response to the aforesaid three points, learned Prosecutor submitted to the contrary and submissions of learned Prosecutor are as

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follows:

a) As regards reliable information, learned Prosecutor submitted that it is reliable information received by the Sponsoring Authority;

b) As regards the second point, it was submitted that the two cases are largely similar;

c) As regards the third point, learned Prosecutor really did not have much of a say as the obtaining position is no Tamil translation of the bail order has been provided in the grounds booklet

7. We carefully considered the three points that have been urged / exhorted before us. We also considered the rival submissions. The discussion and dispositive reasoning are as follows:

a) As regards the first point of bald averment that 'reliable information' was received by Sponsoring Authority is not good enough qua subjective satisfaction qua imminent possibility of detenu being enlarged on bail. Therefore, this point enures to the benefit of the petitioner;

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b) As regards the second point, we find that two cases are dissimilar as the provisions of IPC referred to by learned counsel for petitioner are not there in the bail order which has been treated as a similar case and this by itself makes the two cases vastly different. This means that subjective satisfaction qua imminent possibility of detainee being enlarged on bail is impaired. More importantly, a careful perusal of the bail order brings to light that the similar case of Thirupathy and Pasupathi in the Villupuram Sessions Court is vastly different as that was a case where the injured were admitted in the hospital and discharged. This leaves us with the conclusion that comparison of these two cases is a case of comparison of Apples and Oranges or Chalk and Cheese. The sequitur is, second point also cures to the benefit of the petitioner.

c) As regards the third point, we respectfully remind ourselves of *Pownammal* case law [*Pownammal Vs. State of Tamil Nadu* reported in (1999) 2 SCC 413] wherein Hon'ble Supreme Court addressed itself to the question of furnishing the

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detenu with the copies in a language which the detenu is conversant with and answered the same. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the answer is set out in paragraph 16. Paragraphs 6 and 16 of *Povnammal* case law {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 detenu, 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 detenu be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed.'

Povnammal case law principle or ratio applies in all fours to the case on hand. Therefore, the third point also cures to the benefit of the petitioner.

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8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.08.2022 bearing reference D.O.No C2/44/2022 made by the second respondent is set aside and the detenue Thiru.Sanjeev, aged 22 years, son of Thiru. Dakshnamurthy, 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.)

(M.N.K.J.)

29.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

சுயம்

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

1. The Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Magistrate and District Collector
Kallakurichi District
Kallakurichi
3. The Superintendent of Police
Kallakurichi District
Kallakurichi

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The point being common, the above order will enure to the benefit of the petitioner in the case on hand also.

7. However, we deem it appropriate to consider the second point also.

As regards the second point, the undisputed dates and events which is placed before us is as follows:

'Representation dated	..	10.10.2022
Representation received dated	..	12.10.2022
File submitted on dated	..	27.10.2022
Under Secretary dealt with on	..	27.10.2022
Deputy Secretary dealt with on	..	27.10.2022
Minister dealt with on	..	01.11.2022
Rejected letter prepared on	..	01.11.2022
Rejection letter sent to the detenu on	..	02.11.2022

Govt. Holidays falls on:

15.10.2022, 16.10.2022, 22.10.2022, 23.10.2022, 24.10.2022, 29.10.2022, 30.10.2022

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	14	4
2.	No. of holidays	5	2
	No. of delay days	9	2
			Total 11 days delay



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8. We find that even if the intervening 7 public/Government holidays

15.10.2022, 16.10.2022, 22.10.2022, 23.10.2022, 24.10.2022, 29.10.2022, 30.10.2022 are excluded, there is a delay of 11 days in considering the representation. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively. It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided on case to case basis. In the case on hand, we adopt such an approach and we find that 11 days delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.09.2022 bearing reference D.O.No.C2/53/2022 made by the second respondent is set aside and the detenu Thiru.Sharfudheen, aged 38 years, son of Thiru.Anwar Basha is directed to



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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.)

(M.N.K.,J.)

05.04.2023

Index : Yes

Speaking

Neutral Citation

gpa

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



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To

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1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Kallakurichi District
Kallakurichi
3. The Superintendent of Police
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4. The Superintendent
Central Prison, Cuddalore
5. The Inspector of Police
Chinnasalem Police Station
Kallkurichi District
6. The Public Prosecutor
Madras High Court, Chennai



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

gpa

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