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H.C.P.No.2203 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2203 of 2022

S.Vasanthi

.. Petitioner

Vs

1.The Commissioner of Police,
Tambaram Police Commissioner Office,
Sholinganallur, Chennai – 600 119.

2.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

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

4.State By:
Inspector of Police,
S-15 Selaiyur Police Station,
Chennai.

.. 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 pertaining to the order of detention passed by the first respondent herein and made in BCDFGISSSV No.154/2022 dated 06.10.2022 and to set aside the same and directing the third respondent to produce the detenu Thiru.Prasanna Venkatesh Balaji @ Aswin, aged 24 years, S/o.Balaji Krishnan now confined in Central Prison-II, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner	:	Mr.A.Nagarajan
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' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 06.10.2022 bearing reference BCDFGISSSV No.154/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and first respondent is the detaining authority as impugned detention order has been made by first respondent.



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WEB COPY 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 one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.224/2022 on the file of T-12 Selaiyur Police Station for alleged offences under Sections 406, 420, 506(i) @ 406, 420, 409 and 506(i) 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. Mr. A. Nagarajan, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by

Mr.M.Sylvester John, learned counsel for all respondents are before us.

5.We find from the support affidavit in the captioned HCP that very many grounds have been raised/urged. However, in the hearing learned counsel for petitioner posited his campaign against the impugned preventive detention order on two points and they are as follows:

- (1)The detenu was arrested on 26.08.2022 but the impugned detention order was made only on 06.10.2022, 41 days later;
- (2)The substratum of the impugned detention order is one ground case and one adverse case, both are qua alleged offences interalia under Sections 406, 420 IPC and it is not a case of prejudice to public order.

6.In response to the aforesaid two points, Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel made submissions to the contrary and a summation of the submissions are as follows:



- (1) There cannot be numeric expression in terms of making of the impugned detention order qua date of arrest;
- (2) It is case of cheating within the meaning of 415 of IPC punishable under Section 420 IPC and therefore, the impugned detention order was clamped.

7. We carefully considered both the points that were urged by learned counsel for petitioner and resisted by learned Prosecutor before us.

8. As regards the first point, there is no numeric expression, much less statutory numeric expression of the number of days within which a preventive detention order has to be made qua date of arrest. To put it differently, this is not a quantitative expression argument. It is a qualitative expression argument and if translated into a legal proposition, the same is 'live and proximate link between grounds of detention and purpose of detention has snapped'. It can also be said that the ground case has become stale. The lead case in this regard is the celebrated/oft quoted **Bhawarlal's** case reported in **(1979) 1 SCC 465 [Bhawarlal Ganeshmalji v. State of Tamil Nadu]**. This **Bhawarlal's** case principle was subsequently reiterated



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by the Hon'ble Supreme Court in a recently decided case i.e. **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, as regards **Banik** case we are referring to paragraph numbers as in Live Law report. In paragraph 18 of **Banik** case, **Bhawarlal** principle has been reiterated and paragraph 18 of **Banik** case reads as follows:

19.Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu, (1979) 1 SCC 465, has explained as follows:

“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.”

(Emphasis supplied)

9.Two other important paragraphs in **Banik** case are paragraphs 20 and 21 [paragraph numbers as per Live Law report] which reads as follows:

'20.It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21.In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal



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from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.'

10. Before we proceed further it is necessary to briefly set out the facts qua **Banik** case as that is being referred to as a case law citation. **Banik** case 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. In **Banik** case after considering the trajectory the matter took from the date of recommendation by the Sponsoring Authority, Hon'ble Supreme Court went into the issue of live and proximate link between grounds of detention and purpose of detention snapping and held that there are two facets to this argument. One facet is 'unreasonable delay' and the other facet is 'unexplained delay'. In the case on hand, we find that



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the point clearly falls in the latter category/facet as the reason remains unexplained i.e., reason for delay.

11. Though the first point itself enures to the benefit of the petitioner in petitioner's campaign against the impugned detention order, we deem it appropriate to consider the second point also as the same was urged in the hearing. A careful perusal of the impugned preventive detention order brings to light that both the ground case and the lone adverse case turn on alleged offences qua Sections 406 and 420 IPC. A further perusal of the facts of these cases as narrated in the impugned preventive detention order brings to light that it is a transaction between individuals. As a contradistinction illustration, we say that it is not a case of collecting deposits from the public at large by making false representations or by luring public into making deposits by making tall but false claims. In this view of the matter, we deem it appropriate to extract and reproduce the relevant paragraph qua the ground case [as in the impugned preventive detention order] and the same is as follows:

'.....One Prasanna Venkatesh Balaji came in to



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contact with him through his close family friends. The said Prasanna Venkatesh Balaji introduced himself as stock trader and an advisor in the share market and placed before him few fascinating ideas through Whatsapp and in person. Believing his words, he gave Rs.48 lakhs as investment to Prasanna Venkatesh Balaji through his bank account. He also gave case in front of the parents of Prasanna Venkatesh Balaji in his home as investment as per his advise. He introduced several schemes with huge investments and hence they further invested money. Specifically, they have invested huge money in SBI future contract which is going to mature in the month of August. However, he stated that the date of maturity is extended to one more month and they will get extra money for that extension also and sent records through Whatsapp. Then he informed that, the contract is matured in the month of September and yielded handsome profit and sent statement of account. Then he told that he is going to Paris on business work and will come back in the month of October and will settle the amount. Having come to know that he didn't gone to Paris, they contacted him but he bargained for time and dodged for a month. They went to the house of Prasanna Venkatesh Balaji and he along with his mother Vasanthi, father Balaji and brother Narasimhan agreed to return their money. After



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a gap of few days the complainant contacted him, but he didn't responded. Again they went to his house, but this time he threatened to kill them with henchmen if they disturb him often. However they gave time to him as they told that they will return the money. Meanwhile they requested to atleast return their capital amount, but didn't get any response from him. After a gap of few days, when they went to his house he was not there. Further through his activities they came to a conclusion that he was cheated them deliberately. Meanwhile, when the complainant and his uncle Kasthuri Rangan and friend Murugan went to the house of Prasanna Venkatesh Balaji on 07.01.2022, but no one is there. When they contacted through cell phone, Prasanna Venkatesh Balaji, his mother and brother abused him in filthy language and threatened to eliminate him by arranging henchmen by using the money which was earned by them by cheating the persons like him. In this connection on receipt of complaint from Thiru.Sarvabouman, the Sub-Inspector of Police has registered a case in T-12 Selaiyur P.S. Cr.No.224/2022 u/s.406, 420, 506(i) IPC @ 406, 420, 409, 506() IPC and taken up the investigation.'

12.The adverse case as set out in the impugned preventive detention order is as follows:

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'The complainant Thiru.Naresh is working as a Delhi Chief reporter of WIN TV Company. His wife Rukmani is working in the Accounts Department of Deepam Educational Welfare Society, an NGO at Kottivakkam, Chennai. On Suresh is also working as an Accounts Manager in the same Company. In the year 2020, he lured them by telling that he is running an import and export business and if they invest Rs.1 lakh they can earn Rs.20 thousand per month. Believing his words, they invested money and the said Suresh also paid the profits for two months. Further, instigated by the said Suresh, he has collected lakhs of rupees from his relatives and invested 1½ Crore rupees. He has sent this money through bank transactions only. To his dismay, since one month Suresh started to tell Rukmani that he became bankrupt as he has lost all the investments in the business. On hearing this, his health condition is deteriorated and he along with his relatives including his brother's son-in-law Maran met Suresh and he took them to one Prasanna Venkatesh Balaji of Medavakkam and he handed over the records of his newly purchased BMW Car and the documents of his apartment and shouldered the burden of paying their money. Believing the words of Prasanna Venkatesh Balaji, they returned back, but even after a week time, there is no



response from his side. When the complainant approached Maran for further course of action, he told them that he will take that BMW car and the documents of the property for his money and told them that they don't have money and told him to go and collect money from him if they can. In this connection, on receipt of complaint from Thiru.Naresh, a case was registered. The accused Thiru.Prasanna Venkatesh Balaji was arrested and the case is U.I.'

13.A careful perusal of the aforementioned narrative in the impugned preventive detention order leaves us with the considered view that the matter may not move from law and order arena to public order arena. In this regard, we deem it appropriate to recollect the celebrated judgment of the Hon'ble Supreme Court in ***Ram Manohar Lohia vs. State of Bihar and others*** reported in ***AIR 1966 SC 740***. The most relevant paragraphs are paragraphs 51 and 52, which reads as follows:

'51.We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended



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result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorder or only some ? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder, They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other example can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule



30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52.It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.'

14.A careful perusal of the aforementioned celebrated ***Ram Manohar Lohia's*** case make it clear that Hon'ble Supreme Court has propounded three concentric circles doctrine i.e., 'Law and order', 'Public order' and 'Security of State' in that order. This three concentric circles doctrine has



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also been explained by taking an illustrative approach which is captured in the extracted paragraph supra. It is clear that in the case on hand it can only be a law and order issue as it is private transaction. Furthermore, we also remind ourselves that when preventive detention orders are assailed, the question which we put to ourselves is whether normal and regular law and order is good enough to contain the situation. If the answer is in the affirmative, the impugned preventive detention order deserves to be dislodged as it does not gravitate into the second concentric circle of 'Public order'. In the light of the narrative qua the ground case and adverse case as in the impugned preventive detention order [which we have extracted and reproduced supra] as the same are private transactions, we have no difficulty in coming to the conclusion that the case on hand does not move from the 'Law and Order' larger concentric circle to the 'Public Order' smaller concentric circle. This means that the answer to the question which we posed to ourselves, namely 'whether normal and regular law and order is good enough to contain the situation?' is in the affirmative. That the answer is in the affirmative by itself means that the impugned detention order deserves to be dislodged.



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15.As regards the live and proximate link between grounds of detention and purpose of detention and on snapping point is concerned, we have repeatedly held that this point has to be tested on a case to case basis and the neutral citations are ***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*** and ***N.Anitha Vs. The Secretary to Government and others*** reported vide Neutral Citation of Madras High Court being ***2023:MHC:1159***.

16.Likewise, as regards Law and Order and Public Order in the three concentric circles doctrine also, we have repeatedly held that the same also has to be tested on a case to case basis.



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17.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.10.2022 bearing reference BCDFGISSSV No.154/2022 made by the second respondent is set aside and the detenu Thiru.Prasanna Venkatesh Balaji @ Aswin, male, aged 24 years, son of Thiru.Balaji Krishnan 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.)

10.04.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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



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To

- 1.The Commissioner of Police,
Tambaram Police Commissioner Office,
Sholinganallur, Chennai – 600 119.
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Government of Tamil Nadu,
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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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