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H.C.P.No.2239 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2239 of 2022

Fastina Vincy David

.. Petitioner

Vs.

1.State of Tamil Nadu rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -600 009.

2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.

3.The Superintendent of Police,
Nagapattinam District, Nagapattinam.

4.The Superintendent of Prison,
Central Prison, Thiruchirapalli.

5.The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.

.. 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 of the detention order in C.O.C. No.53 of 2022 dated 20.10.2022 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Villan Kasi @ Kasi, male, aged 28 years, S/o.Munusamy before this Court, now confined at Central Prison, Thiruchirapalli and set him at liberty.



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For Petitioner : Mr.M.K.Yukanth
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

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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 wife of the detenu assailing 'detention order dated 20.10.2022 bearing reference C.O.C. No.53/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fifth 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.288 of 2022 on the file of Velankanni Police Station for alleged offences under Sections 147, 148, 449, 307 and 302 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.M.K.Yukanth, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit, very many points/grounds have been urged/raised but in the hearing, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on Section 8(1) of Act 14 of 1982, which reads as follows:

'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



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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. '

6. Adverting to the aforementioned provision of law, learned counsel submitted that the date of detention order and detention pursuant to preventive detention order is 20.10.2022, it was served on the detenu on the next day i.e., on 21.10.2022 but 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 27.10.2022. 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 a typical page in the booklet containing date regarding date of supply of same to detenu is as follows:



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அட்டவணை

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2.	புகார் வாக்குமூலம் திரு.டி.வி.சுமேஷ் குமார்	05-06
3.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. டி.வி.சுமேஷ் குமார்	07-10
4.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. மணிவேல்	11-12
5.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. டி.வி.மணிவண்ணன்	13-16
6.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. சரவணன்	17-19
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இதன் நகல் தகவல் கமிட்டியினால் உண்மை நகலாக சமர்ப்பிக்கப்பட்டுள்ளது.
 துறைமுகம் / சமீபத்தில் கமிட்டியினால் உண்மை நகலாக சமர்ப்பிக்கப்பட்டுள்ளது.
 19/11/2022



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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 20.10.2022 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 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*



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 indefeasible 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 in the case on hand would mean that it cannot be later than 24.10.2022. In the case on hand, the grounds on which the impugned preventive detention order was made was admittedly served on the detenu only on 27.10.2022. Therefore, there is no difficulty in coming to the conclusion that there is infraction of Section 8(1) of Act 14 of 1982.

9. We remind ourselves that dealing with infraction of Section 8(1) of Act 14 of 1982, this Bench in the case of **M.Shylaja Vs.The**



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Additional Chief Secretary to Government and others reported in **2023/MHC/193** has held that such infraction would lead to dislodgement of impugned preventive detention order.

10. In the light of narrative, discussion and dispositive reasoning supra, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in the case on hand.

11. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 20.10.2022 bearing reference C.O.C. No.53/2022 made by the second respondent is set aside and the detenu Thiru.Villan Kasi @ Kasi, aged 28 years, son of Thiru.Munusamy 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.)
13.06.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -600 009.
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- 6.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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