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H.C.P.No.2401 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS JUSTICE **K. GOVINDARAJAN THILAKAVADI**

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Ganesan

.. Petitioner

VS

- 1.State of Tamil Nadu
Rep. By the Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George, Chennai – 09.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent of Central Prison,
Central Prison – Thiruchirapalli,
Thiruchirapalli.
- 4.The Superintendent of Police,
Nagapattinam, Nagapattinam District.
- 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 calling for the records in C.O.C.No.48/2022 dated 16.10.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and quash the same as illegal and consequently direct the respondent to produce the petitioner's son



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Greaton @ Rosary Greaton, son of Ganesan, aged about 25 years, before this Court, who now detained in Central Prison, Thiruchirappalli and set him at liberty.

For Petitioner : Mr.A.Elumalai
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' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by father of the detenu assailing 'detention order dated 16.10.2022 bearing reference C.O.C.No.48/2022' [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



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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 an adverse case. The ground case which constitutes substantial part of 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.A.Elumalai, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all respondents are before us.

5. In the support affidavit, very many points/grounds have been urged/raised but two points projected in the arguments in the hearing find favour with us and therefore we would set out those two points infra and refrain from examining the other points in the instant legal drill on hand.



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6. The first point urged by learned counsel for petitioner is that there is infraction/violation of Section 8(1) of Act 14 of 1982 as the grounds 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 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 'said booklet').

7. Adverting to the aforementioned provision of law, learned counsel submitted that the date of detention order and detention pursuant to preventive detention order is 16.10.2022, it was served on the detenu on the same day i.e., on 16.10.2022 but the 'grounds on which the impugned preventive detention order has been made' was served on the detenu in the form of said booklet only on 23.10.2022.

8. Learned counsel for HCP petitioner submits that this is a clear infraction of the statutory requirement put in place by 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 said booklet and a scanned reproduction of a typical page in the said booklet containing date regarding date of supply of same to detenu is as follows:



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அட்டவணை

வ.எண்	பொருள்	பக்க எண்
1.	வேளாங்கண்ணி காவல் நிலைய குற்ற எண்.179/2022 வழக்கின் முதல் தகவல் அறிக்கை நகல்	01-03
2.	புகார் வாக்குமூலம் திரு.சதீஷ், துபெ சேகர்	04-05
3.	விபத்து பதிவேடு நகல்	06
4.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. சதீஷ்	07
5.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு.ராஜா	08
6.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு.ஆனந்த்	09
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9.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு.பாபிபதாமன் பெள்ளாண்டோ	12
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11.	மாவட்ட முதன்மை மற்றும் அன்வு நீதிமன்றத்தால் வழங்கப்பட்ட பிணை உத்தரவு நகல் ஆங்கிலம் மற்றும் தமிழாக்கம்	14-17
12.	இறுதி அறிக்கை	18-22
13.	வேளாங்கண்ணி காவல் நிலைய குற்ற எண்.288/2022 வழக்கின் முதல் தகவல் அறிக்கை நகல்	23-26
14.	புகார் வாக்குமூலம் திரு.டி.வி.சுமேந்திரமார்	27-28
15.	161(3) கு.வி.மு.ச வாக்குமூலம் திரு. டி.வி.சுமேந்திரமார்	29-32
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9. 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 16.10.2022 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:



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'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 inalienable 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



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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.'

10. 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 20.10.2022. In the case on hand, the grounds on which the impugned preventive detention order was made was admittedly served on the detenu only on 23.10.2022. Therefore, there is no difficulty in coming to the conclusion that there is infraction of Section 8(1) of Act 14 of 1982.

11. The impugned detention order is dated 16.10.2022 and the same was served on the detenu on the same day whereas the grounds on which the impugned preventive detention order was made was communicated to the detenu only on 23.10.2022 which is admittedly later than 5 days from the date of detention. To be noted, date of detention i.e., formal arrest is on 16.10.2022 as the detenu is in any way incarcerated from 23.08.2022, in other words, date of service



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of impugned preventive detention order is on the date of formal arrest pursuant to the impugned preventive detention order.

12. 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 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.

13. The second point turns on 'live and proximate link' between the grounds of detention and purpose of detention as date of remand in the ground case is 23.08.2022 but the impugned detention order has been made only on 16.10.2022.

14. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed in this regard. Considering the facts and circumstances of the case and nature of ground case, we find that this generic explanation without specificity of learned State Additional Public Prosecutor is unacceptable.

15. We also remind ourselves of **Sushanta Kumar Banik's** case



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[**Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333**]. To be

noted, **Banik** case law 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, wherein after considering the proposal by the Sponsoring Authority and after noticing the trajectory the matter took, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be examined on a case to case basis. Hon'ble Supreme Court has held in **Banik** case law that this point has two facets. One facet is 'unreasonable delay' and the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

16. To be noted, **Banik** case has been respectfully followed by this Court in a series of cases i.e., in **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, N.Anitha Vs.**



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The Secretary to Government and others reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and many other orders in HCP cases.

17. 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.

18. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 16.10.2022 bearing reference C.O.C.No.48/2022 made by the second respondent is set aside and the detenu Thiru.Greaton @ Rosary Greaton, aged 25 years, son of Thiru.Ganesan 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.) (K.G.T.,J.)
05.06.2023

Index : Yes / No
Neutral Citation : Yes / No
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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,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George, Chennai – 09.
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Nagapattinam District,
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- 6.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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