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H.C.P.No.2468 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

Coram

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

H.C.P.No.2468 of 2022

Kowsalya

.. Petitioner

VS

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 9.
- 2.The District Magistrate & District Collector,
Tiruppur District, Tiruppur.
- 3.The Superintendent of Police,
Tiruppur, Tiruppur District.
- 4.The Superintendent of Prison,
Central Prison – Coimbatore, Coimbatore District.
- 5.State Rep. By its
The Inspector of Police,
Palladam Police Station,
Tiruppur 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 entire records relating to the petitioner's husband's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 22.11.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.77/Goonda/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Vicky @ Vigneshwaran, S/o.Murugesh, aged 26 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.



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For Petitioner : Mr.W.Camyles Gandhi
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 wife of the detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference Cr.M.P.No.77/Goonda/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.

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 are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.1152 of 2022 on the file of Palladam Police Station for alleged offences under Sections 294(b), 394, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] r/w Sections 3(1)(e), 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. 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.W.Camyles Gandhi, 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. In the hearing, Mr.W.Camyles Gandhi, learned counsel for petitioner urged two points and they are as follows:

(i) Date of arrest of the detenu is 15.10.2022 but the impugned preventive detention order has been made only on 22.11.2022 owing to which 'live and proximate



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link' between the grounds and purpose of detention has snapped;

(ii) In paragraph 5 of the grounds of detention, the detaining authority categorically noticed the then obtaining position that the detenu has not moved any bail petition in the ground case but without any other material and without recording subjective satisfaction that there is imminent possibility of detenu being enlarged on bail, the impugned preventive detention order has been clamped qua the detenu.

6. In response to the aforesaid two points, learned State Additional Public Prosecutor made submission to the contrary and the same are as follows:

(i) Certain procedural delays were caused owing to the process involved in making the impugned preventive detention order;

(ii) Considering the ground case, there was possibility of the detenu being enlarged on bail.

7. We carefully considered the rival submissions in the light of the case file and the records before us.



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8. As regards the first point, we have no hesitation in saying that the time consumed has not been satisfactorily explained. The test is not a numerical or quantitative test but it is qualitative test and in touchstone is whether live and proximate link between the grounds and purpose of detention has snapped. In this regard, we remind ourselves of **Sushanta Kumar Banik's** case [**Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333**], which is a lead case in this regard and the relevant paragraph in *Banik* case is paragraph 20 in the Live Law report (paragraph 21 in the SCC Online 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.'



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9. This Bench has also repeatedly respectfully followed *Banik* principle laid down by the Honourable Supreme Court. If *Banik* principle is applied, it emerges clearly that live and proximate link between the grounds and purpose of detention has snapped in the case on hand.

10. Though the first point enures to the benefit of the petitioner in his campaign against the impugned preventive detention order, as another point was urged, we deem it appropriate to consider the same.

11. As regards the second point, paragraph 5 of the grounds of detention reads as follows:

'5. I am aware that Thiru.Vicky alias Vigneshwaran is now lodged at District Prison, Tiruppur as a remand prisoner in Tiruppur District, Palladam Police Station Crime No.1152/2022 under Section 294(b), 394, 506(ii) Indian Penal Code and Section 3(1)(e), 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 case and his remand period has been extended till 25.11.2022. I also aware that, he has not moved any bail petition in the above case till the date. On the materials placed before me, I am satisfied that the said Vicky alias Vigneshwaran is a Goonda



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and there is a compelling necessity to detain him in custody under the Tamil Nadu Act 14 of 1982 in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order and peace under Section 3(1) of the Tamil Nadu Act 14 of 1982 and G.O.(D) No.326, Home, Prohibition and Excise (XVI) Department, dated 13.10.2022 as per the exercise of the powers delated to me.'

12. Other than the aforementioned paragraph 5 of the grounds of detention made by the detaining authority, there is no other material qua imminent possibility of detenu being enlarged on bail. As rightly urged by the learned counsel for petitioner, the detaining authority has not recorded the subjective satisfaction that there is possibility of the detenu being enlarged on bail much less imminent possibility in this regard. We remind ourselves that imminent possibility is not qua time but qua probability. In this view of the matter, subjective satisfaction of the detaining authority as regards imminent possibility of detenu being enlarged on bail is a very vital aspect but the detention order has been made after noticing that the detenu has not moved any bail petition.

13. Be that as it may we are conscious and aware that the preventive detention order in a HCP legal drill has to be tested on the



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date of the preventive detention order. However, in the case on hand, as a buttressing factor, we find that as regards the ground case viz., Crime No.1152 of 2022 the same legally manifested itself as Spl.S.C. No.31 of 2022 on the file of the file of the Principal Sessions Judge, Tiruppur and the learned Judge after full trial has acquitted the detenu in and by a judgment dated 10.03.2023. To be noted, we make it clear that this is only a buttressing factor which has now come to light but we are interfering qua the impugned preventive detention order only on the ground that subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired.

14. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.11.2022 bearing reference Cr.M.P.No.77/Goonda/2022 made by the second respondent is set aside and the detenu Thiru.Vicky @ Vigneshwaran, aged 26 years, son of Thiru.Murugesh, 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.) (K.G.T.,J.)
06.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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



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To

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- 2.The District Magistrate & District Collector,
Tiruppur District, Tiruppur.
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- 5.The Inspector of Police,
Palladam Police Station,
Tiruppur District.
- 6.The Public Prosecutor
High Court, Madras.



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

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