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H.C.P.No.2524 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2524 of 2022

Dr.G.Mohanasurya

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by The Additional Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City, Office of the
Commissioner of Police,
Sholinganallur, Chennai – 600 119.

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

4.The Inspector of Police,
Central Crime Branch,
Tambaram City at Sholinganallur,
Chennai – 600 119.

.. 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 relating to the detention order in No.168/BCDFGISSSV/2022 dated 17.10.2022 against the petitioner's father Ganesan @ Rama Ganesan, Male, aged 56 years the detenu herein now confined in Central Prison, Puzhal, Chennai and produce and physically bring the body of the detenu before this Court and set aside the detention order and set him at liberty.

For Petitioner : Mr.A.Natarajan
Senior Counsel
for Ms.A.Madhumathi

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 daughter of detenu assailing a 'preventive detention order dated 17.10.2022 bearing reference BCDFGISSSV No.168/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth 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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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 are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.32/2022 on the file of Central Crime Branch-I, Chennai for alleged offences under Sections 465, 467, 468, 471, 420 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. Natarajan, learned senior counsel appearing on behalf of



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Ms.A.Madhumathi, learned counsel 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.Though several grounds have been urged in the support affidavit, learned counsel for petitioner, at the hearing, exhorted one point in his campaign against the impugned detention order and that one point turns on delay in considering the representations [one sent by the detenu's spouse and the other sent by the detenu's daughter] qua impugned detention order.

6.Responding to the aforementioned submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us a list of dates and the details of the same are as follows:

		Rep-I	Rep-II
<i>'Representation dated</i>	..	28.10.2022	29.10.2022
<i>Representation received on</i>	..	31.10.2022	01.11.2022
<i>File submitted on</i>	..	11.11.2022	11.11.2022
<i>Under Secretary dealt with on</i>	..	11.11.2022	11.11.2022



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Deputy Secretary dealt with on .. 11.11.2022 11.11.2022
Minister dealt with on .. 15.11.2022 15.11.2022
Rejection letter prepared on .. 15.11.2022 15.11.2022
Rejection letter sent to the detenu on .. 15.11.2022 15.11.2022

Govt. Holidays falls on:

Rep-I & II 05.11.2022, 06.11.2022, 12.11.2022 and 13.11.2022

Rep-I

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	10	04
2.	No. of holidays	02	02
	Total delay days	08	02
Total 10 days delay			

Rep-II

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	09	04
2.	No. of holidays	02	02
	Total delay days	07	02
Total 9 days delay			

7.We find that even if the intervening four public/Government holidays 05.11.2022, 06.11.2022, 12.11.2022 and 13.11.2022 are excluded, there is a delay of 10 days and 9 days in considering the representations. We



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make it clear that delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively. It has to be decided qualitatively based on facts, circumstances and trajectory the representation has taken, in other words, it has to be decided on a case to case basis. In the case on hand, we adopt such an approach and we find that 10 days and 9 days delays vitiate 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 where delay in considering representation qua a preventive detention order is raised.

8. Besides delay in considering the two representations, one sent by the detenu's spouse and the other sent by the detenu's daughter, there is yet another point which enures to the benefit of the petitioner in petitioner's campaign against the impugned preventive detention order. This point pertains to subjective satisfaction of detaining authority qua imminent possibility of detenu being enlarged on bail. The relevant portion in the impugned preventive detention order is contained in paragraph 4 and the



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most pertinent part of paragraph 4 reads as follows:

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'4.I am also aware that Thiru Ganesan @ Rama Ganesan who was remanded in Chennai CCB Cr.No.32/2022 has filed a bail petition in Chennai CCB Cr.No.32/2022 before the Principal District and Sessions Court, Chengalpattu vide CrI.M.P.No.4609/2022 and the same is pending. However, the Sponsoring authority has stated that it is learnt that Thiru Ganesan @ Rama Ganesan's relatives are taken steps to take him out on bail in Chennai CCB Cr.No.32/2022 by filing a bail application in appropriate Court. Further, it is pertinent to note that in a similar case, registered at Chennai, Central Crime Branch Cr.No.70/2020 u/s. 420, 465, 468 IPC @ 406, 420, 465, 467, 468, 471 IPC, bail was granted to the same accused Thiru Ganesan @ Rama Ganesan by the Hon'ble High Court of Madras in CrI.O.P.No.4040 on 28.02.2022. Hence, I infer that it is very likely of his coming out on bail in Chennai, Central Crime Branch Cr.No.32/2022 since in the similarly placed cases, bails were granted by the Courts after a lapse of time.....'

9.Adverting to the aforementioned portion of paragraph 4 of the impugned preventive detention order, learned senior counsel pointed that



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subjective satisfaction has been arrived at on the basis of two determinants.

One determinant is the steps that are said to be underway or in other words, steps that are said to be in progress or being taken by the relatives for moving bail petition for detenu. The second point is bail being granted in what according to the Detaining Authority is a similar case being bail order of this Court dated 28.02.2022 in Cr.O.P.No.4040 of 2022. As regards the first point, it is pointed that there there is no supporting material or in other words there is no statement from the relatives. As this point really turns on records before us, learned Prosecutor does not have much of a say. Absent supporting material, this determinant is floored and this means that the subjective satisfaction of detaining authority is flawed. As regards the second determinant the bail order in what according to the Detaining Authority is a similar case has been annexed to the grounds booklet at Pages 215 to 225. Adverting to this order it was pointed out by learned senior counsel that the petitioner in that case was not named in the complaint but was later found to be a witness in a forged Power of Attorney document. Relevant portion of the bail order of this Hon'ble Court reads as follows:

'2.....This petitioner, who has not been named in



the complaint but later found to be part of the forged power of attorney deed by impersonation by fixing his signature as witness in the said document along with one David had been represented as the second accused and David had been arrayed as the third accused.'

10. Adverting to the factual position as recorded by the Hon'ble Single Judge in what according to the Detaining Authority is similar case it is submitted that the cases are clearly dissimilar. In response to this argument, learned Additional Public Prosecutor submitted that both the cases are broadly comparable. We carefully considered the rival submissions and we also perused the bail order dated 28.02.2022 of this Court. We find that the petitioner in that case not being named in the complaint originally and being subsequently noticed as a witness to one of the documents, namely, a Power of Attorney has weighed with the Hon'ble Judge in gravitating towards exercising his discretion in favour of grant of bail. Such circumstances are absent in the case on hand and there is no dispute about this aspect of the matter. Therefore, we find that the two cases are dissimilar and comparison of the same for arriving at subjective satisfaction qua imminent



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possibility of detenu being enlarged on bail is clearly flawed. The further sequitur is, the impugned preventive detention order deserves to be dislodged.

11.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.10.2022 bearing reference BCDFGISSSV No.168/2022 made by the second respondent is set aside and the detenu Thiru.Ganesan @ Rama Ganesan, male, aged 56 years, son of Thiru.Ramasamy 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.)

17.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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



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To
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- 1.The Additional Secretary to Government,
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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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