



H.C.P.No.2571 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr. JUSTICE R.SAKTHIVEL

H.C.P.No.2571 of 2022

Narasingh Rao
S/o.Ramswamy

.. Petitioner/Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
T.1 Ambattur Police Station,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus to calling for the records relating to



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the detention order passed by the second respondent pertaining to the order made in BCDFGISSSV No.146/2022 dated 04.11.2022 in detaining the detenu under 2(e) of Tamil Nadu Act 14 of 1982, as a Drug Offender and quash the same and direct the respondents to produce the detenu Narasingh Rao, Son of Ramswamy, aged about 30 years, who is detained at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 the detenu assailing a 'preventive detention order dated 04.11.2022 bearing reference BCDFGISSSV No.146/2022,' [hereinafter 'impugned preventive 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.



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 detinue is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.589 of 2022 on the file of T-1 Ambattur Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(i) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.G.Nirmal Krishnan, 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 *qua* captioned HCP many points have been urged but in the hearing, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on two points and those two points are as follows:

- (i) 'live and proximate link between the grounds of detention and purpose of detention has snapped' as detenu was arrested on 26.08.2022 but the impugned preventive detention order has been made only on 04.11.2022;
- (ii) subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of detenu being enlarged on bail is flawed/impaired as the detaining authority has relied on a bail order dated 15.12.2020 in CrI.M.P.No.1842 of 2020 on the file of Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai (Rakesh case) to arrive at subjective satisfaction but Rakesh case is dis-similar as the offences alleged in that case are under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act [intermediate quantity] whereas



the offences alleged in the ground case are under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(i) of NDPS Act [commercial quantity].

6. In response to aforementioned two points urged by learned counsel for petitioner, learned Prosecutor submitted to the contrary and the submissions of learned Prosecutor are as follows:

- (i) As regards the first point i.e., live and proximate link between the grounds of detention and purpose of detention having snapped, learned Prosecutor submits that material had to be collected /collated and time was consumed in this exercise;
- (ii) As regards imminent possibility of detenu being enlarged on bail, learned Prosecutor submitted that the ground case i.e., solitary case on which the impugned preventive detention order is predicated and Rakesh's case are comparable as both pertain to offences under the NDPS Act and both are cases concerning same substance *qua* NDPS Act.

7. We carefully considered the rival submissions.



8. As regards the first point which turns on 'live and proximate link between the grounds of detention and purpose of detention snapped' point, inter-alia considering the facts and circumstances of the case on hand, nature of ground case and taking into account the fact that the impugned preventive detention order is predicated on a solitary ground case, we find that the explanation of learned Prosecutor is unacceptable.

9. 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*]. 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 other facet is



'unexplained delay'. We find that the case on hand falls under latter facet i.e., unexplained delay owing to reasons alluded to and delineated supra in the preceding paragraph of this order.

10. To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs. The Principal Secretary to Government and others** [Neutral Citation of Madras High Court being **2023/MHC/334**], **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** [Neutral Citation of Madras High Court being **2023/MHC/733**], **Sangeetha Vs. The Secretary to the Government and others** [Neutral Citation of Madras High Court being **2023:MHC:1110**], **N.Anitha Vs. The Secretary to Government and others** [Neutral Citation of Madras High Court being **2023:MHC:1159**] and a series of other orders in HCP cases.

11. As regards the second point which turns on subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of detenu being enlarged on bail, we find that in **Rakesh's** case bail order [relied upon by the detaining authority] the quantity of psychotropic substance is



intermediate quantity [section 20(b)(ii)(B) of NDPS Act] whereas in the ground case, the quantity of psychotropic substance is commercial quantity [section 20(b)(ii)(C) of NDPS Act] and hence, we have no difficulty in accepting the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority is impaired/flawed. The reason is, the difference between intermediate quantity and commercial quantity is statutorily codified and the parameters for grant of bail/bar *qua* bail are also statutorily recognised inter-alia *vide* section 37 of NDPS Act.

12. Before concluding, we remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ. We also remind ourselves that imminent possibility of a detenu being enlarged on bail is not *qua* time but it is *qua* probability.

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.11.2022 bearing reference BCDFGISSSV No.146/2022, made by the second respondent is set aside and the detenu



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Thiru.Narasingh Rao, aged about 30 years, son of Thiru.Ramswamy, 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.) (R.S.V., J.)
26.06.2023

Index : Yes

Neutral Citation : Yes

gm

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

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
T.1 Ambattur Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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