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H.C.P.No.2600 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2600 of 2022

Preetha

.. Petitioner

VS

1.State of Tamil Nadu rep. by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 09.

2.The Commissioner of Police
Tambaram City, Tambaram,
Chennai – 600 045.

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

4.The Inspector of Police,
T6 Peerankaranai Police Station,
Chennai.

.. Respondents

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 Memo No. 199/BCDFGISSSV/2022 dated 18.11.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Habib Rahman, S/o. Abdullah Munaf, aged about 44 years the detenu, now confined in Central Prison, Puzhal, Chennai before



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this Court and set the petitioner's husband Habib Rahman, S/o. Abdullah Munaf, aged about 44 years the detenu herein at liberty.

For Petitioner : Mr.S.Mohamed Ansar
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 wife of detenu assailing a 'preventive detention order dated 18.11.2022 bearing reference BCDFGISSSV No.199/2022' [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]



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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 constitutes substantial part of substratum of the impugned detention order is Crime No.399 of 2022 on the file of T-6 Peerkankaranai Police Station for the alleged offences under Sections 406 and 420 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.S.Mohamed Ansar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State 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:



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'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 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. '

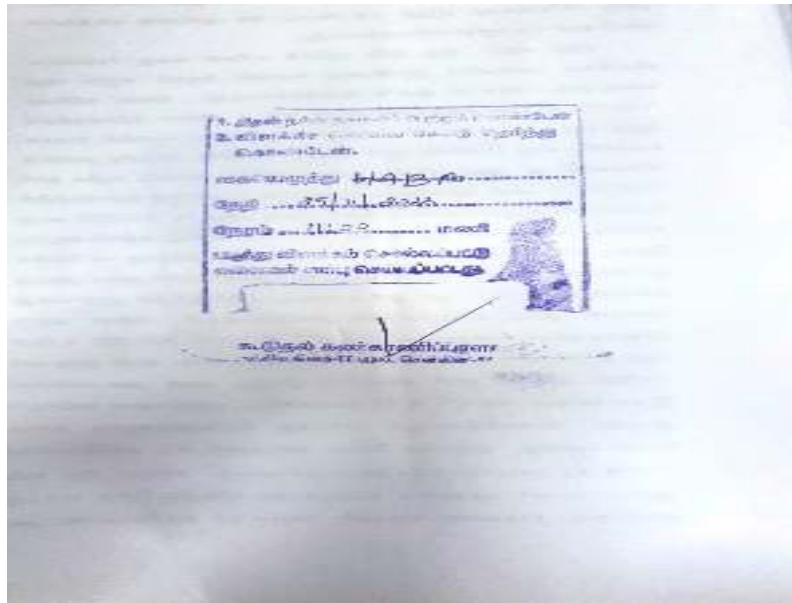
6. Adverting to the aforementioned provision of law, learned counsel submitted that the date of impugned preventive detention order is 18.11.2022 and date of formal arrest pursuant to impugned preventive detention order is 19.11.2022 (served on the detenu on the next day i.e., on 19.11.2022) but the 'grounds on which the impugned preventive detention order has been made' was served on the detenu only on 25.11.2022. 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 and a scanned reproduction of a typical page in the same containing date regarding date of supply of same to detenu is as follows:



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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 18.11.2022 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



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remand has to be included for computing 60/90 days. We are conscious that this **Kapil Wadhawan's** case 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



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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 22.11.2022. In the case on hand, the grounds on which the impugned preventive detention order was made was admittedly served on the detenu only on 25.11.2022. 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 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.



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Impugned detention order dated 18.11.2022 bearing reference BCDFGISSSV No.199/2022 made by the second respondent is set aside and the detenu Thiru.Habib Rahman, aged 44 years, son of Thiru.Abdullah Munaf, 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.)
19.06.2023

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, Puzhal, Chennai.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 09.
- 2.The Commissioner of Police,
Tambaram City, Tambaram, Chennai – 600 045.
- 3.The Superintendent of Prison
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- 4.The Inspector of Police,
T6 Peerkankaranai Police Station, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

M.SUNDAR, J.,



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