



H.C.P.(MD) No.1322 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

H.C.P.(MD) No.1322 of 2022

Viswa

... Petitioner

-VS-

1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, (Prohibition and Excise) Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
O/.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3.The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records relating to the Impugned



H.C.P.(MD) No.1322 of 2022

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Order of Detention made in P.D.No.61/2022, dated 28.05.2022 on the file of the District Collector and District Magistrate, Thanjavur District, Thanjavur, the second respondent herein branding the detenu by name Viswa, S/o.Vijayan, aged about 18 years as "Goonda", who is now confined in Central Prison, Tiruchirappalli and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.R.Ilayaraj

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the detenu viz., Viswa, Son of Vijayan, aged about 18 years. The detenu has been detained by the second respondent by his order in P.D.No.61/2022, dated 28.05.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.



H.C.P.(MD) No.1322 of 2022

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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though the detention order is of the year 2022, the Hon'ble Division Bench of this Court, by order dated 20.06.2023 has passed the following order:-

"In these batch of Habeas Corpus Petitions among various grounds that has been raised on behalf of the detenues, three grounds particularly, raised by the detenues side are under consideration before us.

2. The first issue is that the non intimation of the arrest in the ground case whether would be a fatal to the subsequent detention order passed under Act 14 of 1982.

3. The second issue is whether the non-supply of entire materials or documents pertaining to the similar case that has been referred by the detaining authority in the detention order would also be a fatal to the detention order and the third issue is whether all the documents that has been mentioned in the grounds of detention irrespective of the fact whether it is relied upon document or not with translated version in vernacular to be



WEB COPY supplied to the detenu.

4. In respect of these three issues, so far as the first two issues are concerned there are judgments taking divergent views, therefore, we thought of necessarily to refer these two issues to be decided by an authoritative pronouncement by the Full Bench and our reasoning for such reference would follow.

5. In respect of third issue, we are deciding that issue and our reasoning for deciding the third issue also would follow.

6. In view of the aforestated as that would take some reasonable time to refer the matter to the Full Bench and Constitution of the Full Bench to decide those issues by giving authoritative pronouncement will naturally take some reasonable time, we feel that in the meanwhile, since atleast in respect of those two issues i.e., issue No.1 and 2 are concerned judgments have already been issued, taking the view in some judgments in favour of the detenues, by giving such benefit to the detenues in these cases, we feel that the respective detention order which are impugned in this batch of cases are concerned, such detention can be suspended by way of giving direction to make temporary release of these detenues as of now.

7. In view of the aforestated, there shall be a direction to the respondents to temporarily release the detenues concerned in these cases by way of an interim suspension of the detention order



H.C.P.(MD) No.1322 of 2022

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8. Post these matters for detailed judgment on 28.06.2023.

9. In view of the temporary release that has been ordered now under Section 15 of the Act 14 of 1982, they have to execute a bond and that shall be complied with by the detenues or on their behalf to the satisfaction of the jail authorities."

4. Thereafter, a detailed order was passed by the Division Bench of this Court on 30.06.2023 referring the matter to the Full Bench of this Court. After reference, the Full Bench of this Court by passing a detailed order dated 28.03.2024 answered the issue No.1 and No.2 in negative and directed all the H.C.Ps., to be listed before the concerned Bench for decision based on the facts and circumstances of each individual cases in the light of the above pronouncement to the issues referred.

5. In view of the above, this individual case is taken up for hearing to be decided on its own merits.



H.C.P.(MD) No.1322 of 2022

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6. Though several grounds have been raised in the habeas corpus petition, learned counsel appearing for the petitioner would mainly focus his arguments on the ground that there is an inordinate delay between the arrest of the detenu and passing the impugned detention order. In this case, the detenu was arrested on 16.04.2022, and the impugned detention order came to be passed only on 28.05.2022, i.e., after a lapse of more than one month. This inordinate delay in passing the detention order would vitiate the same. He further submitted that there is no live and proximate link between the date of arrest and the date of the detention order. Hence, on this ground, the present impugned detention order is also liable to be set aside.

7. Learned Additional Public Prosecutor appearing for the respondents strongly opposed the habeas corpus petition by filing his counter. He would submit that though there was a delay in passing the impugned detention order, on that score alone, it cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition.



H.C.P.(MD) No.1322 of 2022

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8. The detenu was arrested in the ground case as early as on 16.04.2022 and the detention order was passed on 28.05.2022. This shows an inordinate delay in passing the detention order, which is also unexplained. The live and proximate link between the arrest of the detenu and the need for passing the order of detention has snapped. Thus, on this sole ground alone, the impugned order of detention is liable to be set aside.

9. In the case of *Sushanta Kumar Banik vs. State of Tripura*, reported in *2022 SCC Online (SC) 1333*, when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of actual arrest and the date of detention order, the Honourable Supreme Court has held that the live and proximate link, between the grounds and the purpose of detention, stands snapped throwing a considerable doubt on the genuineness of the requisite satisfaction of the detaining authority in passing the detention order unless such delay is satisfactorily explained and consequently making it invalid. The relevant portion is extracted hereunder:-



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H.C.P.(MD) No.1322 of 2022

"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."

10. In view of the above, as pointed out by the counsel for the petitioner, the delay has not been satisfactorily explained, thereby vitiating and invalidating the detention order.



H.C.P.(MD) No.1322 of 2022

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11. In the result, the Habeas Corpus Petition is allowed and the detention order in P.D.No.61/2022, dated 28.05.2022 is set aside. It is reported that pursuant to the order passed by this Court, dated 20.06.2023, the detenu had already been granted interim suspension and he is not in prison. Now that the Habeas Corpus Petition is allowed, the petitioner need not surrender before the prison authorities.

[A.D.J.C., J.] [K.R.S., J.]

24.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Tiruchirappalli,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND
K.RAJASEKAR, J.
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