



H.C.P.(MD) No.1359 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM:

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

H.C.P.(MD) No.1359 of 2023

Sri Rengan

... Petitioner

-VS-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a



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writ of Habeas Corpus to call for the entire records, connected with the detention order of the respondent No.2 in Detention Order No.80/2023, dated 15.10.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Sri Rengan, son of Kumaresan, aged about 27 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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., Sri Rengan, son of Kumaresan, aged about 27 years. The detenu has been detained by the second respondent by his order in Detention Order No.80/2023, dated 15.10.2023 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.



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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 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 surrendered before the Judicial Magistrate No.I, Dindigul on 25.07.2023, and the impugned detention order came to be passed only on 15.10.2023, i.e., after a lapse of more than two months. 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.

4. Learned Additional Public Prosecutor appearing for the



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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. He would vehemently opposed that the petitioner has involved in three previous murder cases. 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.

5. It is brought to the notice of this Court that the petitioner has been released on statutory bail and the detention order has been passed only based on the ground case and the previous murder cases are not shown as adverse case. Even if the contention of the learned Additional Public Prosecutor is accepted for a moment, we feel that despite the fact that the petitioner has three previous cases registered for offence under Section 302 IPC, the respondent police has not been vigilant in filing the charge-sheet within the time and further, they have not taken any steps to cancel the bail granted to the detenu in the previous case/s. We also find that in several cases, the police chooses to adopt this short circuit method of passing the preventive detention order instead of resorting to cancel the bail granted to the detenu or completing the investigation in time to preclude the



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accused from getting statutory bail and such an attitude has been deprecated by this court on several occasion.

6. A Division Bench of the Apex Court in ***Shaik Nazneen vs. State of Telangana and others*** (2023) 9 SCC 633 has held on the issue as under:-

"19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."

7. A Full Bench of the Apex Court in a recent decision in ***Nenavath Bujji etc. vs. State of Telangana and others*** (Criminal Appeal Nos.1738-39 of 2024 dated 21.3.2024, making a reference on the case of ***Shaik Nazneen*** has issued guidelines to be followed by the detaining authority in similar situation as under:-

"43. We summarize our conclusions as under:-

(i) The Detaining Authority should take into consideration only



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relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is



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based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu.



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(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention.

For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority."



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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:-

"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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11. 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.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.80 of 2023, dated 15.10.2023, passed by the second respondent is set aside. The detenu, viz., Sri Rengan, son of Kumaresan, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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

23.04.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

am/ssk.



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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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AND
K.RAJASEKAR, J.

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