IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.07.2025
Pronounced on	.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

H.C.P.No.2828 of 2024

Malliga ...Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Police,
Central Prison Puzhal,
Chennai District.

4.The Assistant Commissioner of Police,
O/o. Assistant Commissioner of Police,
Koyambedu Range, Chennai. ...Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ or direction calling for the entire records connected with the detention order in BCDFGISSSV No.976/2024 dated 19.09.2024 on the file of the 2nd respondent and

quash the same and direct the respondents to produce the petitioner's son one named Mr.Pradeep S/o.Thirunavukarasu aged about 29 years, now confined at Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizhselvakumar

For Respondents : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.R.Muniyapparaj,
Additional Public Prosecutor

ORDER

M.S.RAMESH, J.

The petitioner herein, who is the mother of the detenu, namely Pradeep S/o.Thirunavukarasu aged about 29 years, has come forward with this petition challenging the detention order passed by the second respondent dated 19.09.2024 issued against her son, branding him as "Goonda" 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 14 of 1982].

2. The detenu was arrayed as an accused in Crime No.293 of 2024 on the file of the K-1 Sembium Police Station on the allegation that he was involved in the incident that occurred on 05.07.2024, wherein one Mr.Armstrong was hacked to death by an unlawful mob. On the strength of this ground case, the detaining authority had arrived at a subjective satisfaction that the detenu had come to adverse notice in that case and has acted in a manner prejudicial to the maintenance of public order and public peace and thus, branded him as a Goonda through the impugned detention order.

3. Though several grounds have been raised in this Habeas Corpus Petition, one main ground, which has been highlighted in this case, is that the grounds of detention have been based on materials running to almost 1000 pages and since the Sponsoring Authority had sent a proposal on 19.09.2024 to the detaining authority and the detention order was passed on the very same day, which is humanly impossible.

4. The learned Additional Advocate General submitted that after the proposal had reached the Deputy Commissioner of Police, Intelligence Section for scrutiny, the same was sent to the detaining

authority on 16.09.2024 and therefore, the detaining authority had sufficient time to scrutinize the materials produced and then pass the detention order. It is also his submission that the detenu has not been granted regular bail by the Trial Court and it is his apprehension that in case the detention order is quashed, the Trial Court may reconsider grant of bail and on that ground also, he sought for dismissal of this Habeas Corpus Petition.

5. The main contention in this case is that the detaining authority had passed the detention order on the very same day when the proposal was received from the sponsoring authority and since the materials relied upon by the detaining authority runs to almost 1000 pages, it would be humanly impossible for the detaining authority to properly apply his mind and pass the detention order.

6. Since the learned Additional Advocate General had claimed that the proposal was sent to the Deputy Commissioner of Police, Intelligence Section on 16.09.2024 itself, we had scrutinized the proposal of the sponsoring authority, namely, the Assistant Commissioner of Police, Koyambedu Range, Chennai. Therein, we find that the proposal is

claimed to have been sent by him on 19.09.2024 only and not as claimed by the learned Additional Advocate General. What has been produced before us is a letter of proposal from the Deputy Commissioner of Police, Intelligence Section, to the Commissioner of Police, Greater Chennai, for passing a detention order under the Goondas Act. Admittedly, the Deputy Commissioner of Police, Intelligence Section is not the sponsoring authority in this case.

7. The proforma for detention under Act 14 of 1982 and the intimation format has also been produced before us. From this format, we find that the original proposal is claimed to have been circulated by the Assistant Commissioner of Police/sponsoring authority to his higher officials on 05.09.2024. This proposal filed is claimed to have been received by the Deputy Commissioner of Police, Pulianthope, Chennai on 11.09.2024. The file has then been forwarded to the Joint Commissioner of Police, North Zone, Greater Chennai on 12.09.2024. The file has then been forwarded to the sponsoring authority/Assistant Commissioner of Police, who in turn had sent the proposal to the detaining authority on 19.09.2024.

8. The claim of the learned Additional Advocate General that the Deputy Commissioner of Police, Intelligence Section, had earlier sent a proposal on 16.09.2024 to the detaining authority, is not reflected in the proposal intimation format of the sponsoring authority, which is the usual procedure adopted by the sponsoring authorities while sending a proposal to the detaining authority. On the other hand, the alleged proposal of the Deputy Commissioner of Police, Intelligence Section, produced before us appears to be an isolated covering letter dated 16.09.2024, with no proof of receipt by the detaining authority.

9. The learned Additional Advocate General made a faint attempt to refer to a signature of the detaining authority in the proforma for detention under Act 14 of 1982. The counter sign in this proforma has no nexus to the separate letter claimed to have been given by the Deputy Commissioner of Police, Intelligence Section to the detaining authority, nor does the signature in the proforma for detention bear the date on which it was received by the detaining authority. In the absence of any other reliable materials before us to show that the proposal, along with the relied upon documents, were sent to the detaining authority sufficiently in advance for scrutiny, we have no second thoughts in

coming to the conclusion that the proposal was received by the detaining authority on 19.09.2024 only and on the same day, the grounds of detention was prepared on the basis of the materials running to about 1000 pages.

10. In the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in ***2022 SCC OnLine SC 1333,*** the Hon'ble Supreme had referred to the observations made in the case of ***Ashok Kumar Vs. Delhi Administration*** reported in ***(1982) 2 SCC 403*** that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. On such a reference, it was observed that in view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and to keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

11. When the detaining authority receives a proposal for detaining any person under the Goondas Act, the subjective satisfaction, which the authority requires to arrive at, *inter alia*, is to take into account the antecedents of the detenu, if any, as a relevant factor, apart from arriving at a satisfaction that he is aware of the fact that the person is actually in custody and if he had a reason to believe on the basis of reliable materials placed before him, there is a real possibility of him being released and that on being released, he would, in all probability, indulge in prejudicial activities or if it is fully essential to detain him, to prevent him from doing so.

12. As stated earlier, we fail to understand as to how it would be humanly possible for the detaining authority to scrutinize about 1000 pages of materials, apply his mind on the antecedents on the detenu, satisfy himself that the detenu was in actual custody and thereafter arrive at a subjective satisfaction on the basis of the materials placed before him that there was an imminent possibility of him being released on bail and if so, he would probably indulge in prejudicial activities.

13. We hasten to add here that we are passing similar orders in the Habeas Corpus Petitions filed by 14 detenus, who were all involved in the same ground case in Crime No.293 of 2024 and each and every detenu has been supplied with materials running to about 1000 pages respectively, on which the detaining authority had placed reliance. In other words, the detaining authority appears to have scrutinized approximately 14,000 pages on one single day and passed 14 detention orders, which is an impossible task for any human being. Not to mention that the detaining authority, in the rank of a Commissioner of Police, did not undertake any official or other administrative work on the said day.

14. In the light of these observations, we are constrained to hold that the detaining authority had not applied his mind, while passing the grounds of detention and the detention order.

15. The learned Additional Advocate General also raised an apprehension that Bail Courts tend to grant bail to accused whose detention orders are quashed by the High Court. To the said apprehension, we intend to remind the Bail Courts that the standard or grounds for consideration of bail application is distinct from that of the

grounds of consideration adopted by the High Court in interfering with the detention orders. While punitive detention is made after proper application of mind, preventive detention touches upon a subjective satisfaction of a detaining authority.

16. The High Courts, while setting aside a preventive detention order, undertakes the limited task of finding out as to whether the detaining authority was satisfied on the basis of the reliable materials before him that there was a possibility of him being released on bail and if so, he would, in all probability, indulge in prejudicial activities. On the other hand, the Bail Courts take several factors into account while exercising its discretion to grant bail.

17. The principles governing grant of bail have been time and again reiterated by the Hon'ble Supreme Court in several of its decision and has been holding that the jurisdiction to grant bail has to be exercised cautiously, on the basis of such well settled principles, *vis-a-vis*, the facts and circumstances of each case.

18. In the case of ***Deepak Yadav Vs. State of Uttar Pradesh and Another*** reported in ***(2022) 8 SCC 559,*** many such principles were reiterated in the following manner:-

> ***A. Principles governing grant of bail***
>
> ***20.*** *Section 439CrPC is the guiding principle for adjudicating a regular bail application wherein court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.*
>
> ***21.*** *In Prahlad Singh Bhati v. State (NCT of Delhi) [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , a two-Judge Bench of this Court stated the principles which are to be considered while granting bail which are as follows : (SCC pp. 284-85, para 8)*
>
> > *"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the*

trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

22. *As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [(2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , it is well-settled that the factors to be borne in mind while considering an application for bail are:*

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

23. *The decision in Prasanta [(2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] has been consistently followed by this Court in Ash Mohammad v. Shiv Raj Singh [(2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], Ranjit Singh v. State of M.P. [(2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405], Neeru Yadav v. State of U.P. [(2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], Virupakshappa Gouda v. State of Karnataka [(2017) 5 SCC 406 : (2017) 2 SCC (Cri) 542] and State of Orissa v. Mahimananda Mishra [(2018) 10 SCC 516 : (2019) 1 SCC (Cri) 325].*

24. *In a recent pronouncement of this Court in Y v. State of Rajasthan [(2022) 9 SCC 269 : 2022 SCC OnLine SC 458] authored by one of us (Hon'ble N.V. Ramana, C.J.), it has been observed as under : (SCC paras 24-25)*

> *"24. The impugned order [Omprakash v. State of Rajasthan, 2021 SCC OnLine Raj 3499] passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the courts make a general observation that "the facts and the*

circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

25. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In Mahipal [(2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , this Court observed as follows : (SCC pp. 128-29, para 25)

'25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.' "

(emphasis in original)

25. *For grant or denial of bail, the "nature of crime" has a huge relevancy. The key considerations which govern the grant of bail were elucidated in the judgment of this Court in Ram*

Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] , wherein it has been observed as under : (SCC p. 602, para 4)

> *"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:*
> *(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
> *(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
> *(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
> *(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

26. *Similarly, the parameters to be taken into consideration for grant of bail by the courts have been described in Kalyan Chandra Sarkar v. Rajesh*

Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977]

as under : (SCC pp. 535-36, para 11)

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
> *(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
> *(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
> *(c) Prima facie satisfaction of the court in support of the charge."*

19. Thus, when the principles governing grant of bail are distinct and different from that of the considerations adopted by the High Courts in quashing preventive detention orders, the Bail Court shall not place reliance on the order quashing the preventive detention order or otherwise give credence to any of the findings therein, while considering

grant of regular bail. In the light of these discussions, we make it unambiguously clear that the Bail Court, in such cases, shall not give weightage to quashing of the detention order, as a ground for grant of bail. This observation shall hold good for the present case also.

20. For all the foregoing reasons, the detention order passed by the second respondent/Commissioner of Police on 19.09.2024 in No.976/BCDFGISSSV/2024, is set aside and the Habeas Corpus Petition stands allowed. Consequently, the detenu viz., Pradeep S/o.Thirunavukarasu aged about 29 years, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case. No costs.

[M.S.R.,J] [V.L.N.,J]
.08.2025

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
hvk

M.S.RAMESH, J.
and
V.LAKSHMINARAYANAN, J.

hvk

To

1.The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
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2.The Commissioner of Police,
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3.The Superintendent of Police,
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4.The Assistant Commissioner of Police,
O/o. Assistant Commissioner of Police,
Koyambedu Range, Chennai.

5.The Joint Secretary, Public (Law & Order),
Chennai – 600 009.

6.The Public Prosecutor,
High Court of Madras.

Pre-delivery order made in
H.C.P.No.2828 of 2024

.08.2025