



H.C.P.No.215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

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Shalini

.. Petitioner

Vs

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
Ranipet District, Ranipet District.
- 3.The Superintendent of Prison,
Central Prison, Vellore.
- 4.The Superintendent of Police,
Ranipet District, Ranipet.
- 5.The Inspector of Police,
Kaveripakkam Police Station,
Ranipet District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 23.09.2022 in Memo No.B3/D.O.No.53/2022 dated 23.09.2022

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against the petitioner's husband Mr.Rajeshkumar @ Anil, Male, aged about 29 years, S/o.Mr.Kotteswaran, who is confined at Central Prison, Vellore and set aside the order and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Balasubramanian
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity).

2. When the captioned HCP was listed in the Admission Board, this Court vide order dated 09.02.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 09.02.2023 is as follows:



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 03.01.2023 *inter alia* assailing a 'detention order dated 23.09.2022 bearing B3/D.O. No.53/2022' (hereinafter 'Impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.R.Balasubramanian, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 3(a) r/w 4 of Protection of Children from Sexual Offences Act, 2012 r/w 506(ii) IPC in Crime No.181 of 2022 on the file of Kaveripakkam Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) of 'The

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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].

5. The impugned detention order has been assailed *inter alia* on the grounds that the intimation pertaining to detention order was furnished to the petitioner belatedly and there is variation between the grounds of detention in English and Tamil.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyappara], learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S.J.,]
09.02.2023


[M.N.K.J.,]

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3. The aforementioned proceedings made at the time of admission captures the factual matrix in a nut shell and therefore the aforementioned proceedings shall be read as an integral part and parcel of this order.

4. Though in the Admission Board, the points that the intimation pertaining to detention order was furnished belatedly and that there is variation between the grounds of detention in English and Tamil were raised, in the hearing today, Mr.R.Balasubramanian, learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped. In support of this contention, learned counsel pointed out that the date of arrest is 09.08.2022 but the impugned detention order has been made only on 23.09.2022.

5. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this

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explanation of learned State Additional Public Prosecutor is unacceptable.

6. 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 the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.



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

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.09.2022 bearing reference B3/D.O.No.53/2022 made by the second respondent is set aside and the detenu Thiru.Rajeshkumar @ Anil, aged about 29 years, son of



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Thiru.Kotteeswaran, 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.) (M.N.K.,J.)
17.04.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
Ranipet District, Ranipet District.
- 3.The Superintendent of Prison,
Central Prison, Vellore.
- 4.The Superintendent of Police,
Ranipet District, Ranipet.
- 5.The Inspector of Police,
Kaveripakkam Police Station,
Ranipet District.
- 6.The Public Prosecutor,
High Court, Madras.

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