



H.C.P.No.113 of 2023

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.113 of 2023

Kumar @ Aavi Kumar
S/o.Katthamuthu

... Petitioner / Father of the detenu

Vs.

1. State Rep. by
Secretary to Government (Home),
Prohibition & Excise Department
Government of Tamil Nadu
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
O/o. The District Collector and District Magistrate
Nagapattinam District
Nagapattinam.
- 3.The Superintendent of Police
Nagapattinam District
Nagapattinam.
- 4.The Superintendent of Police
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police
Velankanni Police Station

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Nagapattinam Taluk
Nagapattinam District.

... Respondents

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Prayer:

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records pertaining to the order of detention dated 16.10.2022 passed by the second respondent bearing C.O.C.No.49 of 2022 and quash the same and produce the petitioner son Akash @ Akashkumar S/o.Aavi Kumar @ Kumar aged about 22 years before this Court and set him at liberty forthwith from Central Prison, Tiruchirappalli.

For Petitioner	:	Mr.S.Rajanikanth
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

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

When the matter came up for admission on 27.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:

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

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

Captioned Habeas Corpus Petition has been filed in this Court on 03.01.2023 *inter alia* assailing a detention order dated 16.10.2022 bearing reference C.O.C.No.49/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Mr.M.Kalaiyaran, learned counsel representing the 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 Sections 147, 148, 449, 307 and 302 of IPC in Crime No.288 of 2022 on the file of Velankanni Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil

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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 detention order has been assailed *inter alia* on the ground that the Detaining Authority has not served the last page of the grounds of detention (Tamil Version) in the detention order.

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

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


[M.S.J.]


[M.N.K.J.]

27.01.2023

mk

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2. Mr.S.Rajanikanth, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. Though in the admission board, the point that the detaining authority has not served the last page of the grounds of detention (Tamil Version) in the detention order was projected, in the final hearing today, learned counsel predicated his campaign against the impugned preventive order on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as detenu surrendered and was remanded to judicial custody on 23.08.2022 but the impugned detention order has been made only on 16.10.2022. The learned counsel would further submit that this is the solitary case against the detenu.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected / collated and time was consumed in this exercise. Considering the facts /



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circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

5. 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 a proposal by a 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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6. 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.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.10.2022 bearing reference C.O.C.No.49 of 2022 made by the second respondent is set aside and the detenu Thiru.Akash @



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Akashkumar, male, aged 22 years, son of Thiru.Aavi Kumar @ Kumar 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
Speaking order
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli

To

1. The Secretary to Government (Home),
Prohibition & Excise Department
Government of Tamil Nadu
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
O/o. The District Collector and District Magistrate
Nagapattinam District
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- 3.The Superintendent of Police
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Central Prison, Tiruchirappalli.

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5.The Inspector of Police
Velankanni Police Station
Nagapattinam Taluk
Nagapattinam District.

6.The Public Prosecutor
Madras High Court, Chennai



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and
R.SAKTHIVEL, J.

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