



H.C.P.No.66 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**

H.C.P.No.66 of 2023

Sivamalla @ Kariyan

.. Petitioner

Vs

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.District Collector and District Magistrate of
Krishnagiri District, Krishnagiri.
- 3.The Superintendent of Police,
Krishnagiri District, Krishnagiri.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Thally Police Station,
Krishnagiri 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 second respondent dated 24.09.2022 in S.C.No.36/2022 petitioner/detenu Sivamalla @ Kariyan, male, aged 27 years, S/o.Madhaiyan, who is



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confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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 20.01.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 20.01.2023 is as follows:



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and

G.K.ILANTHIRAIYAN, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 06.01.2023 *inter alia* assailing a detention order dated 24.09.2022 bearing reference S.C.No.36/2022 made by 'second respondent [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The detenu is the petitioner.

3. Mr.D.Balaji, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter yesterday.

4. The aforementioned detention order has been made on the ^{present} basis that the detenu is a 'Goonda' under Section 2(f) of '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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

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mk

5. The detention order has been assailed *inter alia* on the ground that the detenu has not filed any bail application qua ground case but the detention order proceeds on the basis that there is imminent possibility of being enlarged on bail.

6. *Prima facie* case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. 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.]


[G.K.I.J.]

20.01.2023

mk

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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. To be noted the 'detention order dated 24.09.2022 bearing reference S.C.No.36/2022' made by the detaining authority shall be referred to as 'impugned detention order' for the sake of convenience and clarity.

4. Though in the Admission Board the point that no bail application qua ground case has been filed on behalf of the detenu was raised, in the hearing today, Mr.D.Balaji, learned counsel for petitioner submitted that the 'live and proximate link' between the grounds of detention and purpose of detention has snapped. In support of his contention, learned counsel pointed out that the date of arrest in the ground case is 04.08.2022 but the impugned detention order has been made only on 24.09.2022.

5. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected



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and time was consumed for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this 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 24.09.2022 bearing reference S.C.No.36/2022 made by the second respondent is set aside and the detenu Thiru.Sivamalla @ Kariyan, male, aged 27 years, son of Thiru.Madhaiyan is directed to be set at liberty forthwith, if not



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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
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.District Collector and District Magistrate of
Krishnagiri District, Krishnagiri.
- 3.The Superintendent of Police,
Krishnagiri District, Krishnagiri.
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- 6.The Public Prosecutor,
High Court, Madras.



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