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H.C.P.No.72 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.72 OF 2023

Jothi

.. Petitioner

Vs.

1.State of Tamil Nadu

Rep. By the Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police

The Greater Chennai City
Vepery, Chennai – 600 007.

3.The Superintendent of Prison

Central Prison
Puzhal, Chennai – 600 066.

4.The Inspector of Police

P-1, Pulianthope Police Station,
Chennai.

.. Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records relating to the detention order in Memo No.435/BCDFGISSSV/2022 dated 25.11.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's brother LAKSHMANAN S/O. PANDIYAN aged about 32 years the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set petitioner's brother LAKSHMANAN S/O. PANDIYAN aged about 32 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.C.Johnson Samuel
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 19.01.2023, 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 M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 09.01.2023 *inter alia* assailing a detention order dated 25.11.2022 bearing reference No.435/BCDFG188SV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The sister of the detenu is the petitioner.

3. Mr.D.Gopi Krishnan, learned counsel representing the counsel on record for habeas corpus petitioner is before us.

4. The aforementioned detention order has been made on the 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' for the sake of convenience and clarity].

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and
M.NIRMAL KUMAR, J.

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.]


[M.N.K.J.]

19.01.2023

mk

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2. There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.616 of 2022 on the file of P-1 Pulianthope Police Station initially registered for alleged offences under Sections 147, 148, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and after investigation, altered into Sections 147, 148, 324, 302 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

3. Mr.S.Senthilvel, learned counsel representing the learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. Though in the admission board, the point 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 was raised, in the hearing today, learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose



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of detention has snapped as date of arrest in the ground case is 21.10.2022

but the impugned detention order has been made only on 25.11.2022.

5.Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned 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 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



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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.

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.



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9.Ergo, the sequitur is, captioned HCP is allowed. Impugned

detention order dated 25.11.2022 bearing reference Memo No.435/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru LAKSHMANAN, aged 32 years, son of Thiru. PANDIYAN, 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.)

20.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

TK

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



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To
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