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H.C.P.No.88 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

Coram

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

H.C.P.No.88 of 2023

Ambika

.. 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

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in Memo No.437/BCDFGISSSV/2022, dated 25.11.2022 passed by the second respondent under the Tamilnadu Act 14



H.C.P.No.88 of 2023

of 1982 and set aside the same and direct the respondents to produce the pet's nephew Marimuthu, son of Devaraj, aged about 35 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him 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 captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 23.01.2023, this Court made the following order:

' Captioned Habeas Corpus Petition has been filed in this Court on 10.01.2023 inter alia assailing a detention order dated 25.11.2022 bearing reference No.437/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Aunt of the detenu is the petitioner.



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H.C.P.No.88 of 2023

3. *Mr.C.Johnson Samuel, 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 Sections 147, 148, 324, 307 and 506(ii) of IPC in Crime No.616 of 2022 on the file of P-1 Pulianthope 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 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 grounds that similar order relied on by the Detaining Authority belongs to some other accused and similar case materials were not properly furnished to the detenue.*

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

7. *Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all*



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H.C.P.No.88 of 2023

*respondents. List the captioned Habeas Corpus
Petition accordingly.'*

2. The aforementioned order made in the 23.01.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.616 of 2022 on the file of P1 Pulianthope Police Station for alleged offences under Sections 147, 148, 324, 307 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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

5. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 21.10.2022 but the



H.C.P.No.88 of 2023

impugned detention order has been made only on 25.11.2022.

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6. 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 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.

7. 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 other facet is 'unexplained delay'. We find that the captioned



H.C.P.No.88 of 2023

matter falls under latter facet i.e., unexplained delay.

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8. 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.

9.To be noted, one adverse case viz., Crime No.261 of 2021 on the file of P1, Pulianthope Police Station for alleged offences *inter-alia* under Section 379 read with Section 34 of IPC is of the year 2021 and therefore, time consumed remains unexplained.

10. Before concluding, we also remind ourselves that preventive



H.C.P.No.88 of 2023

detention is not a punishment and HCP is a high prerogative writ.

WEB COPY

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.11.2022 bearing reference No.437/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Marimuthu, aged 35 years, son of Thiru.Devaraj, 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.)
17.07.2023

Index : Yes

Neutral Citation : Yes

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

To

1. 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



H.C.P.No.88 of 2023

P-1, Pulianthope Police Station
Chennai

5. The Public Prosecutor,
High Court, Madras.

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

gpa

H.C.P.No.88 of 2023

17.07.2023



WEB COPY



H.C.P.No.88 of 2023