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H.C.P.No.81 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

Coram

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

H.C.P.No.81 of 2023

Malliga

.. Petitioner /
Mother of detenu

VS

- 1.The State of Tamil Nadu
Represented By Secretary to Government
Prohibition and Excise Department,
Fort St. George
Chennai – 600 009.
- 2.The District Magistrate and District Collector
Thiruvallur District
Thiruvallur
- 3.The Superintendent of Police
Thiruvallur District, Thiruvallur
4. The Superintendent of Police
Central Prison, Puzhal
- 5.The Inspector of Police
Patirivedu Police Station
Thiruvallur District

.. Respondents



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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 dated 19.12.2022 passed by the second respondent in B.C.D.F.G.I.S.S.S.V No.66 of 2022 and quash the same and direct the respondents herein to produce the petitioner's son Praveen @ Praveen Kumar, son of Kattaiyan, aged 19 years, who is presently undergoing detention in the Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Ms.M.Udayavani
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 11.01.2023 inter alia assailing a detention order dated 19.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.66/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the



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Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Ms.M.Udayavani, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing on 20.01.2023.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 ground that the detention order was passed without arriving at subjective satisfaction as to the imminent possibility of the detenu being enlarged on bail.

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.'

2. The aforementioned order made in the 23.01.2023 Admission



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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 no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.164 of 2022 on the file of Padhirivedu Police Station for an alleged offence under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] altered to 5(j)(iv), 5(l), 6 of 'The Protection of Children from Sexual Offences Act, 2012 (32 of 2012)' [hereinafter 'POCSO Act' for the sake of brevity] and Sections 376, 302 and 109 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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. Ms.Udayavani, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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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 24.10.2022 but the impugned detention order has been made only on 19.12.2022.

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



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

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. There is one more point that has been highlighted. Attention of this Court was drawn to Paragraph 8 of the impugned preventive detention order, which reads as follows:

'8) The accused Praveen @ Praveen Kumar has not filed bail



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*application in the Ground case in Padhirivedu Police Station
Cr.No.164/2022 u/s 174 Cr.PC (Suspicious Death) @ 5(j)(iv), 5(l), 6
of POCSO Act and section 376, 302, 109 IPC before the court.'*

10. Though the Detaining Authority has noticed that the detenu has not filed any bail application in the ground case, the impugned preventive detention order has been clamped. There is no other averment that there is imminent possibility of detenu being coming out on bail. To be noted, the impugned preventive detention order is predicated on a solitary case, namely the ground case alone. Therefore, we are of the view that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is also another reason as to why the impugned preventive detention order is vitiated and therefore, the same deserves to be dislodged.

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.66/2022 made by the second respondent is set aside and the detenu Thiru.Praveen @ Praveen Kumar, aged 19 years, son of Thiru.Kattaiyan, 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.) (R.S.V.,J.)
30.06.2023

Index : Yes

Neutral Citation : Yes

gpa

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

To

1. The Secretary to Government
Prohibition and Excise Department,
Fort St. George
Chennai – 600 009.
2. The District Magistrate and District Collector
Thiruvallur District
Thiruvallur
3. The Superintendent of Police
Thiruvallur District, Thiruvallur
4. The Superintendent of Police
Central Prison, Puzhal
5. The Inspector of Police
Patirivedu Police Station
Thiruvallur District
6. The Public Prosecutor,
High Court, Madras.

M.SUNDAR, J.,
and



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R.SAKTHIVEL, J.,

gpa

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