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HCP.NO.103 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.103 OF 2023

Vendammal

.. Petitioner

Vs

1.State of Tamil Nadu
Rep. By the Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai Police Commissioner
The Commissioner Office
Vepery, Chennai – 7.

3.The Superintendent of Police
Central Prison
Puzhal, Chennai – 66.

4.The Inspector of Police
M3 – Puzhal 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 of Habeas Corpus to call for the records relating to the detention order in Memo 410/ BCDFGISSSV/2022 dated 07.11.2022 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Nandha @ Nandhagopal S/o. Ravichandran the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Nandha @ Nandhagopal S/o. Ravichandran, aged about 28 years the detenu herein at liberty.

For Petitioner	:	Mr.B.M.Santharam For Mr.N.Naresh
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 24.01.2023, 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.NIRMAL KUMAR, J.)

Captioned Habeas Corpus Petition has been filed in this Court on 11.01.2023 *inter alia* assailing a detention order dated 07.11.2022 bearing reference No.410/BCDFGHSVV/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. Mother of the detenu is the petitioner.

3. Mr.N.Nareesh, 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 8(c) read with 20(b)(ii)(B) of NDPS Act, 1985 in Crime No.764 of 2022 on the file of M-3 Puzhal Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber



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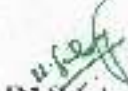
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law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed *inter alia* on the ground that the alleged incident mentioned in the grounds of detention does not warrant detention under Act 14 of 1982.

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

7. Mr.R.Muniyappanaj, 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.]

24.01.2023

mlk



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2. There are three adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.764 of 2022 on the file of M-3 Puzhal Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(B C) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. 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. B.M.Santharam, learned counsel representing Mr.N.Naresh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. The aforementioned proceedings / order made by this Court in the admission board captures the essential short facts imperative for appreciating this order and therefore, without stating the same again, we deem it appropriate to say that the aforementioned proceedings / order dated 24.01.2023 shall be read as an integral part and parcel of this order.



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5.Though in the admission board the petitioner's campaign against the impugned preventive detention order was predicated on the ground that the ground case does not warrant detention under Act 14/1982, in the final hearing, learned counsel predicated his campaign on the ground that the live and proximate link between the grounds of detention and the purpose of detention has snapped. In support of his submission, learned counsel pointed out that the detenu was arrested on 20.09.2022 but the impugned preventive detention order has been made only on 07.11.2022.

6.It was pointed out that this ground has been raised in the support affidavit vide ground (i) and the same reads as follows:

'(i)There was delay in detaining detenue under goondas act it clearly shows that the non application of mind of detaining authority.'

7.We are of the view that the aforementioned ground is not happily worded and could have been articulated better but nonetheless the



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ground has been raised and therefore we proceed with the matter by looking into the counter affidavit filed by the State. To be noted, the deponent of the counter affidavit is the second respondent who is the Detaining Authority. We find that the aforementioned ground (i) in the support affidavit in captioned HCP has been met in the counter affidavit in paragraphs 18 and 19 which read as follows:

'18.I respectfully submit that the averments made in Paragraph Ground (i) of affidavit is not correct. Considering the offences in the 3 adverse cases including two Ganja cases and in the ground case (NDPS case), the Sponsoring Authority initiated a proposal for the detention of the detenu as Goonda. After careful reading of the proposal, affidavit and supporting document placed before the Detaining Authority by the Sponsoring Authority and also after careful perusal of the case diaries of the cases in which the detenu was involved, the Detaining Authority has passed the order of detention in accordance with law on 07.11.2022.



19.Regarding Paragraph Ground (i) of the affidavit, it is submitted that the petitioner is at liberty to raise additional grounds before this Hon'ble Court at the time of hearing of the H.C.P. No.103 of 2023, if this Hon'ble Court permits the same.'

8.We find that the aforementioned reason in the counter affidavit is clearly unacceptable as it lacks specificity and it is not convincing as it should be demonstrated that the reason was good enough to explain the time consumed between the date of arrest and the date of impugned preventive detention order.

9.In this regard, this Court deems it appropriate to remain ourselves to the oft-quoted ***Bhawarlal Ganeshmalji v. State of Tamil Nadu*** reported in **(1979) 1 SCC 465**. This Bhawarlal's case stood the test of time as the same has been relied on by the Honourable Supreme Court as recently as on 30.09.2022 in ***Sushanta Kumar Banik Vs. State of Tripura & others*** reported in **2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333** i.e., that



Bhawarlal's case was followed is evident from paragraph 18 of **Banik's case**

which reads as follows:

' 8. Chinnappa Reddy, J. speaking for the Bench in *Bhawarlal Ganeshmalji v. State of Tamil Nadu*, (1979) 1 SCC 465, has explained as follow:

"It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened." (Emphasis supplied)'



10.As regards **Banik** case, the most relevant paragraphs are

paragraphs 20 and 21 which read as follows:

'20.It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21.In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal



from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.'

11.The aforementioned discourse brings to light that there are two facets to this 'live and proximate link between grounds of detention and purpose of detention' point i.e., 'undue delay' and 'unexplained delay'. In the case on hand though it does not fall under the former, it certainly falls under the latter in the light of ground (i) in the support affidavit and paragraphs 18 and 19 of the counter affidavit. In other words, the delay remains unexplained. Therefore, the sequitur is 'live and proximate link' between grounds of detention and purpose of detention has been snapped thereby vitiating the impugned preventive detention order and therefore, it deserves to be dislodged.



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12.To be noted, ***Banik*** case has been respectfully followed by this Court in ***Gomathi Vs.The Principal Secretary to Government and others*** [Neutral Citation of Madras High Court being ***2023/MHC/334***], ***Sadik Basha Yusuf Vs. The State of Tamil Nadu and others*** [Neutral Citation of Madras High Court being ***2023/MHC/733***], ***Sangeetha Vs. The Secretary to the Government and others*** [Neutral Citation of Madras High Court being ***2023:MHC:1110***], ***N.Anitha Vs. The Secretary to Government and others*** [Neutral Citation of Madras High Court being ***2023:MHC:1159***] and a series of other orders in HCP cases.

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

14.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.11.2022 bearing reference Memo No.410/ BCDFGISSSV/2022 made by the second respondent is set aside and

12/15



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the detenu Thiru. Nandha @ Nandhagopal, aged 28 years, son of Thiru.

Ravichandran 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

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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Government of Tamil Nadu
Home, Prohibition and Excise Department
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Chennai – 600 009.
- 2.The Commissioner of Police
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