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H.C.P.No.104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.104 of 2023

Mukthiar Unnisha
W/o.Shed Munaf

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Avadi City, Chennai.
3. The Superintendent of Prison
Central Prison-II, Puzhal, Chennai.
4. The Inspector of Police
T-3, KORATTIR Police Station
Ambattur, Chennai.

..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records on the file of the 2nd respondent in the detention order No.157/BCDFGISSSV/2022 dated 15.11.2022 and direct the respondents to produce the detenu namely, Syed Naveed, male, 25 years, son of Syed Munaf, now confined at Central Prison II, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi
representing Mr.A.B.Ashok
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 24.01.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 24.01.2023 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 12.01.2023 *inter alia* assailing a detention order dated 15.11.2022 bearing reference No.157/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. Mother of the detenu is the petitioner.

3. Mr.A.B.Ashok, 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 Section 22(c) of NDPS Act, 1985 in Crime No.502 of 2022 on the file of T3 Korattur Police Station.

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

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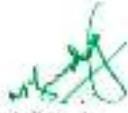
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law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Sham-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience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

5. The detention order has been assailed *inter alia* on the ground that grounds of detention have not been given at the time of serving the detention order to the detenu.

6. *Primo 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.]

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24.01.2023



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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 15.11.2022 bearing reference No.157/BCDFGISSSV/2022' made by the detaining authority shall be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

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

5. Though at the time of admission the argument that grounds of detention have not been given at the time of serving the detention order to the detenu was projected, in the hearing today, Ms.R.Subadra Devi, learned counsel posited her campaign against the impugned preventive detention order on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has snapped by saying that the detenu



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was arrested on 21.09.2022 but the impugned preventive detention order has been made only on 15.11.2022.

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 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.

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 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.

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



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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.11.2022 bearing reference No.157/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Syed Naveed, male, aged 25 years, son of Thiru,Syed Munaf 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.)

14.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

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

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Avadi City, Chennai.
3. The Superintendent of Prison
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5. The Public Prosecutor
High Court, Madras.

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and
R.SAKTHIVEL, J.,

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