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H.C.P.No.110 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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

H.C.P.No.110 of 2023

Amutha

W/o.Subramani

.. Petitioner / Mother of the detenu

Vs.

1.The Secretary to Government
Home, Prohibition & Excise Department
Government of Tamil Nadu
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police
Salem City
Salem District.

3.The Superintendent of Prison
Central Prison – Salem
Salem District.

4.State. Rep by its
The Inspector of Police
Sooramangalam Police Station
Salem District.
(Crime No.590/2022)

... Respondents

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Prayer:

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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 entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 21.11.2022 on the file of the second respondent herein made in proceedings Memo C.M.P.No.153/Goonda/Salem City/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely KESAVAN @ MUTHUPANDI, S/o.Subramani, aged 22 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Salem.

For Petitioner	:	Ms.W.Camyles Gandhi
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 27.01.2023, 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 19.01.2023 *inter alia* assailing a detention order dated 21.11.2022 bearing reference C.M.P.No.153/Goonda/Salem City/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.W.Camylas Gandhi, 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 341, 392 read with 397 and 506(ii) of IPC in Crime No.590 of 2022 on the file of Sooramangalam 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

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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 in the grounds of detention, the Detaining Authority has stated that the detenu was produced before the learned Judicial Magistrate No.II, Salem on 23.09.2022 and remanded to judicial custody in Crime No.590 of 2022 (ground case) but copy of the remand order has not been furnished to the detenu.

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

7. Mr.R.Muniyapparej, 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.]

27.01.2023

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2. Ms.W.Camyles Gandhi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. Though in the admission board, the point that in the grounds of detention, the Detaining Authority has stated that the detenu was produced before the learned Judicial Magistrate No.II, Salem on 23.09.2022 and remanded to judicial custody in Crime No.590 of 2022 (ground case) but copy of the remand order has not been furnished to the detenu was projected, in the final hearing today, learned counsel predicated his campaign against the impugned preventive order on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as petitioner was arrested on 23.09.2022 but the impugned detention order has been made only on 21.11.2022.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected / collated



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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.

5. 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 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.



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6. 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.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.11.2022 bearing reference C.M.P.No.153/GOONDA/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Kesavan @ Muthupandi, male, aged 22



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years, son of Thiru.Subramani 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.)
19.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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

To

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Government of Tamil Nadu
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police
Salem City
Salem District.
- 3.The Superintendent of Prison
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5.The Public Prosecutor
Madras High Court, Chennai



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R.SAKTHIVEL, J.

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