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H.C.P.No.236 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

Coram

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

H.C.P.No.236 of 2023

S.Kavitha

.. Petitioner /
Wife of detenu

VS

1.State of Tamil Nadu

Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009

2. The District Magistrate and District Collector

Tiruallur District
Tiruvallur

3. The Superintendent of Prison

Central Prison, Puzhal
Chennai

4. State rep. By Inspector of Police

C-3, Arani Police Station
Tiruvallur

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records of the



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second respondent pertaining to the order made in No.63/BCDFGISSSV/2022 dated 05.12.2022 in detaining the detenu under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely Nilavazhagan @ Marimuthu, aged 25 years, son of Raghu who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Sridhar

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 05.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.63/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. When the captioned HCP was listed for admission before this Court, proceedings/orders dated 21.02.2023 was made in the



'Admission Board' and the same reads as follows:

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"Captioned Habeas Corpus Petition has been filed in this Court on 24.01.2023 inter alia assailing a detention order dated 05.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.63 of 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. Wife of the detenu is the petitioner.

3. Mr.P.Sridhar, learned counsel representing the 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 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.233 of 2022 on the file of C-3, Arani 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 ground that some of the pages in the booklet furnished to the detenu were illegible, which prevented the detenu from making an effective representation.



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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.'

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.

4. 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.233 of 2022 on the file of C3 Arani Police Station for alleged offences under Sections 341 and 302 of IPC. 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.



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5. Mr.P.Sridhar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. 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 05.12.2022.

7. 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.

8. 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



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

9. 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.



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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.63/2022 made by the second respondent is set aside and the detenu Thiru.Nilavazhagan @ Marimuthu, aged 25 years, son of Thiru.Ragu, 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.)
28.06.2023

Index : Yes

Neutral Citation : Yes

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



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To

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Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009
2. The District Magistrate and District Collector
Tiruallur District
Tiruvallur
3. The Superintendent of Prison
Central Prison, Puzhal
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4. The Inspector of Police
C-3, Arani Police Station
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5. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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