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H.C.P.No.158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.158 of 2023

B.Surya

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai - 66.

4.The Inspector of Police,
Cyber Crime Police Station,
Central Crime Branch, Chennai.

.. Respondents

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 impugned order of the detention dated 06.09.2022 in No.291/BCDFGISSSV/2022 passed by the second respondent herein and quash the same and consequently direct the respondents to setforth the detenue Priya, daughter of Kannan, aged about 37 years,

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now confined in Special Prison for Women, Puzhal, Chennai – 66 and set her at liberty.

For Petitioner : Mr.K.Chandrakumar
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 06.02.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 06.02.2023 is as follows:



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by MSUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 25.01.2023 *inter alia* assailing a detention order dated 06.09.2022 bearing reference Memo No.291/BCDFGHISSV/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. The cousin of the detenu is the petitioner.

3. Mr.K.Tamilarasan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel submits that ground case qua the detenu is for alleged offences under Sections 120(B), 406, 420 IPC and 66D of Information Technology (Amendment) Act, 2008 in Crime No. 46 of 2022 on the file of Prohibition Enforcement Wing, Madhuranthagam.

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

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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 are illegible, which prevented the detenu from making an effective representation and also on the ground that there is non-application of mind in passing the detention order as the detaining authority failed to note that the petitioner was granted bail in the ground case.

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.


[M.S.J.]


[M.N.K.J.]

06.02.2023

gpa

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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 06.09.2022 bearing reference No.291/BCDFGISSSV/2022' made by the detaining authority shall be referred to as 'impugned detention order' for the sake of convenience and clarity.

4. Adverting to and elaborating on the point raised at the time of admission (captured in paragraph 5 of the admission proceedings), Mr.K.Chandrakumar, learned counsel for petitioner submitted 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 14.07.2022 but the impugned detention order has been made only on 06.09.2022.

5. 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



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explanation of learned State Additional Public Prosecutor is unacceptable.

6. 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 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.

7. To be noted, **Banik** case has been respectfully followed by



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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.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.09.2022 bearing reference No.291/BCDFGISSSV/2022 made by the second respondent is set aside and the detenue Tmt.Priya, female, aged 37 years, daughter of Thiru.Kannan 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



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costs.

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(M.S.,J.) (M.N.K.,J.)
24.04.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Special Prison for Women,
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- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.,**

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