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H.C.P.No.162 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.162 of 2023

A.Reshma

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Krishnagiri District, Krishnagiri.
- 3.The Superintendent of Police,
Krishnagiri District, Krishnagiri.
- 4.The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
- 5.The Superintendent,
Central Prison, Salem.

.. 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 of the second respondent herein pertaining to the detention order made in S.C.No.23/2022 dated 11.08.2022 and quash the same and



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direct the respondents to produce the body of detenu Musharaf, son of (Late) Amjad, aged about 22 years, now detained in Central Prison, Salem before this Court and set the detenu at liberty forthwith.

For Petitioner : Mr.M.P.Saravanan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 03.02.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 03.02.2023 is as follows:



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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 25.01.2023 *inter alia* assailing a detention order dated 11.08.2022 bearing reference S.C.No.23/2022 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.P.Veera Narayanan, 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 394 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.185 of 2022 on the file of Mathigiri Police Station.

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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 there is a delay of 52 days in passing the detention order.

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.]
03.02.2023

mk

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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 11.08.2022 bearing reference S.C.No.23/2022' 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.M.P.Saravanan, 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 21.06.2022 but the impugned detention order has been made only on 11.08.2022.

5. Mr.R.Muniyapparaj, 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 this Bench in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being



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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** and a series of other HCP matters.

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 11.08.2022 bearing reference S.C.No.23/2022 made by the second respondent is set aside and the detenu Thiru.Musharaf, male, aged 22 years, son of (Late) Thiru.Amjad 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.) (M.N.K.,J.)
15.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

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To

- 1.The Additional Chief Secretary to Government,
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- 6.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
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M.NIRMAL KUMAR, J.,**

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