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H.C.P.No.175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr. JUSTICE R.SAKTHIVEL

H.C.P.No.175 of 2023

Mrs.Nisreen Fathima
W/o.Kishore Ahamed

.. Petitioner/Wife of detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat
Chennai - 600 009.

2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Coimbatore – 641 018

3.The Superintendent of Police
Office of the Superintendent of Police
Coimbatore

4. The Superintendent of Prison
Central Prison at Coimbatore
Gandhipuram, Coimbatore

5.The Inspector of Police,
Kinathukadavu Police Station
Coimbatore District

... Respondents



H.C.P.No.175 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to calling for the records in detention order in No.Cr.M.P.No.39/D.O/2022/E1 dated 21.12.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of husband of the petitioner detenu Kishore Ahamed, son of Raja Mohammed, aged 33 years, now confined in Central Prison at Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla

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

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 07.02.2023, this Court made the following order:

' Captioned Habeas Corpus Petition has been filed in this Court on 25.01.2023 inter alia assailing a detention order dated 21.12.2022 bearing Cr.M.P.No.39/D.O/2022/E1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.



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2. *Wife of the detenu is the petitioner.*

3. *Mr.M.Mohamed Saifulla, 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 8(c) r/w 22(c), 29(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.350 of 2022 on the file of Kinathukadavu Police Station.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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 grounds that there is inordinate delay in passing the detention order, arrest intimation was sent through SMS to the mother of the detenu, remand order pertaining to ground case has not been furnished to the detenu and some of the pages in the booklet furnished to the detenu are not legible.*

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. '*



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2. The aforementioned order made in the 07.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. 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.350 of 2022 on the file of Annur Police Station for alleged offence under Section 8(c) read with Section 22(c) and 29(1) of NDPS Act, 1985. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Mohamed Saifulla, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



WEB COURT

5. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as the date of remand in the ground case is 15.10.2022 but the impugned detention order has been made only on 21.12.2022.

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 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.

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 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



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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.

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.



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

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.12.2022 bearing reference Cr.M.P.No.39/D.O/2022/E1 made by the second respondent is set aside and the detenu Thiru.Kishore Ahamed, aged about 33 years, son of Thiru.Rajamohammed 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.)
30.06.2023

Index : Yes
Neutral Citation : Yes
gpa

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



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To

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6. The Public Prosecutor,
High Court, Madras.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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