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H.C.P.No.199 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.199 of 2023

Utchimali

W/o.Kethirapal

.. Petitioner/Mother of Detenu

Vs.

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

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

3.The Superintendent of Police,
Office of the Superintendent of Police,
Coimbatore – 641 018.

4.The Superintendent of Prinson,
Central Prison,
Coimbatore – 641 018.

5.The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore – 641 020.

.. Respondents



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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 connected with the detention order of the 2nd respondent in Cr.M.P.No.20/G/2022/E1 dated 30.07.2022 and quash the same and direct the respondents to produce the body and person of detenu namely I Court Maharaja, S/o.Kethirapal aged about 25 years detained in Central Prison, Coimbatore, before this Court and set him at liberty forthwith

For Petitioner : Mr.B.M.Santharam

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' ['HCP' for the sake of convenience and clarity].

2. This order has to be read in conjunction with and in continuation of proceedings made by this Bench in the admission listing on 09.02.2023 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 30.01.2023 *inter alia* assailing a 'detention order dated 30.07.2022 bearing Cr.M.P.No.20/G/2022/E1' (hereinafter 'impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Mr.B.M.Santharam, 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 147, 148, 294(b), 447, 448, 323, 324, 307, 506(ii) IPC r/w Section 3 of Tamil Nadu Public Property Damage and Loss Act, 1992 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 in Crime No.458 of 2022 on the file of Periyanaickenpalayam Police Station.

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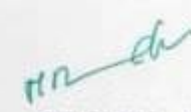
4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, 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 impugned detention order has been assailed *inter alia* on the grounds that there is a delay of 82 days in passing the detention order 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.Munlyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S.J.,]
09.02.2023


[M.N.K.J.,]

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3. The aforementioned proceedings is telltale qua crux of the matter and the primary ground on which the challenge to the impugned detention order is predicated. Though two grounds have been captured in paragraph 5 of the admission proceedings, in the hearing today, learned counsel predicated his argument on one of the grounds, i.e, the 'live and proximate link' between the grounds of detention and purpose of detention has snapped. To be noted, this was projected as 82 days delay in making the detention order and that has been captured in the admission order.

4. 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.



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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.

5. 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.

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



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7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.07.2022 bearing reference Cr.M.P.No.20/G/2022/E1 made by the second respondent is set aside and the detenu Thiru.I Court Maharaja, aged 25 years, son of Thiru.Kethirapal, now detained in Central Prison, Coimbatore is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
27.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.



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

rsi

To

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Chennai - 600 009.
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Office of the District Collector,
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- 6.The Public Prosecutor
High Court, Madras.

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