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H.C.P.No.196 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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

H.C.P.No.196 of 2023

Rabiya

.. Petitioner

Vs

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore District, Coimbatore.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 5.State rep. By its Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.

.. Respondents

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 relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 10.10.2022 on the file

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of the second respondent made in proceedings Memo Cr.M.P.No.30/G/2022/E1 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Anandakumar @ Karimedu Anand, S/o.Krishnaraj, aged 30 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner	:	Mr.S.Selvakumar for Mr.W.Camyles Gandhi
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 08.02.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 08.02.2023 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 01.02.2023 *inter alia* assailing a detention order dated 10.10.2022 bearing reference Cr.M.P.No.30/G/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.

2. Wife of the detenu is the petitioner.

3. Mr.W.Camyles Gandhi, 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 394 r/w 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.639 of 2022 on the file of Mettupalayam 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 70 days in passing the detention order and the same has not been properly explained by the Detaining Authority.

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.,]

08.02.2023

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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 10.10.2022 bearing reference Cr.M.P.No.30/G/2022/E1' made by the detaining authority shall be referred to as 'impugned detention order' for the sake of convenience and clarity.

4. Though in the Admission Board, the argument regarding making of the detention order after the ground case had become stale was expressed by saying that there is 70 days delay in making the impugned detention order, learned counsel now says he stands corrected and the legal proposition is 'live and proximate link' between the grounds of detention and avowed purpose of detention has snapped as date of remand in the ground case is 01.08.2022 but the impugned detention order has been made only on 10.10.2022 and this time log remains unexplained.

5. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected



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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.

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.



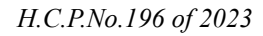
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7. To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/334, Sadik Basha Yusuf Vs. The State 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.

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 10.10.2022 bearing reference Cr.M.P.No.30/G/2022/E1 made by the second respondent is set aside and the detenu Thiru.Anandakumar @ Karimedu Anand, male, aged 30 years, son of Thiru.Krishnaraj is directed to be set at liberty forthwith,

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(M.S.,J.) (M.N.K.,J.)
17.04.2023

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

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore District, Coimbatore.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 5.The Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.
- 6.The Public Prosecutor,
High Court, Madras.



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