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HCP No.210 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.210 of 2023

Rajeswari
W/o.Murugesan

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat
Chennai-600 009.
2. The Commissioner of Police
O/o.Tambaram Commissioner of Police
Tambaram, Chennai.
3. The Superintendent of Prison
Puzhal Central Prison
Chennai District.
4. The Inspector of Police
V-3, J.J.Nagar Police Station
Chennai 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 connected with the detention order in Memo No.441/BCDFGISSSV/2022 on



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25.11.2022 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner's son one named Thiru.Manikandan @ Thiruttu Mani, son of Murugesan, aged about 28 years, now confined at Central Prison, Puzhal, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selvakumar
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 14.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 01.02.2023 inter alia assailing a detention order dated 25.11.2022 bearing reference No.441/BCDFGISSSV/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.Muthamizh Selvakumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing. Learned counsel for petitioner submits that ground case qua the detenu is for



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alleged offences under Sections 294(b), 332, 336, 307 and 506(ii) 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.338 of 2022 on the file of V-3 J.J.Nagar Police Station.

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 40 days delay 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.'

2. The aforementioned order made in the 14.02.2023 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.



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3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.338 of 2022 on the file of V-3 J.J.Nagar Police Station for alleged offences under Sections 294(b), 332, 336, 307 and 506(ii) of IPC. 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.P.Muthamizh Selvakumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 15.10.2022 but the impugned preventive detention order has been made only on 25.11.2022.



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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 in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

7. We find that two adverse cases are completely stale as one is Crime No.275 of 2019 on the file of V-7 Nolambur Police Station and other is Crime No.1380 of 2020 on the file of V-5, Thirumangalam Police Station. To be noted, impugned preventive detention order has been made on 25.11.2022.

8. 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



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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.

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.11.2022 bearing reference No.441/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Thiruttu Mani, male, aged 28 years, son of Thiru.murugesan, 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.)
03.07.2023

Index : Yes
Speaking
Neutral Citation : Yes

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



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

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To

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Home, Prohibition & Excise Department
Secretariat
Chennai-600 009.
2. The Commissioner of Police
O/o.Tambaram Commissioner of Police
Tambaram, Chennai.
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High Court, Madras.

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