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H.C.P.No.213 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.213 of 2023

Ponnuthai

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By The Chief Secretary
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600 009.
- 2.The Commissioner of Police / Detaining Authority
Coimbatore City
Coimbatore
3. The Superintendent of Prison
Central Prison, Coimbatore
4. The Inspector of Police
E-1. Singanallur Police Station
Singanallur
Coimbatore District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records of the



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second respondent in detention order in C.No.81/G/IS/2022 dated 07.12.2022 passed under the Tamil Nadu Act 14 of 1982 and set aside the same and also direct the respondents to produce the petitioner's son Saravanan @ Noi Saravanan, son of Senthil Kumar, aged 25 years, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.B.Thiyagarajan
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 10.02.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 02.02.2023 inter alia assailing a detention order dated 07.12.2022 bearing reference C.No.81/G/IS/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.B.Thiyagarajan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous



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listing. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 323, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.655 of 2022 on the file of E-1, Singanallur 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 a delay of more than a month 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. '

2. The aforementioned order made in the 10.02.2023 Admission

listing shall be read as an integral part and parcel of this order which



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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 are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.655 of 2022 on the file of E1 Singanallur Police Station for alleged offences under Sections 147, 148, 323, 324, 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.B.Thiyagarajan, 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 and remand in the ground case is 01.11.2022 but the impugned detention order has been made only on 07.12.2022.

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



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explanation of learned State Additional Public Prosecutor is unacceptable.

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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, 19213' [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 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



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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, 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.

9.To be noted, out of the two adverse cases, the first adverse case viz., Crime No.535 of 2021 on the file of E1 Singanallur Police Station for alleged offences *inter-alia* under Sections 294(b), 324 and 506(ii) IPC altered to 294(b), 326 and 506(ii) IPC is of the year 2021 and second adverse case viz., Crime No.127 of 2022 on the file of E1 Singanallur Police Station for alleged offences *inter-alia* under Sections 294(b), 324 and 506(ii) IPC, though it is of the year 2022, the occurrence was on 15.02.2022 and therefore time consumed remains unexplained.

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



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WEB COPY 11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.12.2022 bearing reference No. C.No.81/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.S.Saravanan @ Noi Saravanan, aged 25 years, son of Thiru.Senthilkumar, 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.)
17.07.2023

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gpa

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



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To

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Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600 009.
2. The Commissioner of Police / Detaining Authority
Coimbatore City
Coimbatore
3. The Superintendent of Prison
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5. The Public Prosecutor,
High Court, Madras.



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

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