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H.C.P.No.285 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.285 of 2023

S.Kavitha

.. Petitioner

VS

1.The State

Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Avadi City, Thiruvallur District.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
T5, Thiruverkadu Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus calling for the
records leading to detention of petitioner's husband namely Prakash
@ Lal, son of Kumar, aged about 29 years under Act 14/1982 vide
detention order dated 12.11.2022 on the file of the second
respondent made in proceedings in No.155/BCDFGISSSV/2022



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quash the same, consequently direct the respondents to produce the body and person of Prakash @ Lal, Son of Kumar, aged about 29 years, who is lodged at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.D.Sugumar
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 27.02.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 16.02.2023 inter alia assailing a detention order dated 12.11.2022 bearing reference No.155/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.Wife of the detenu is the petitioner.

3.Mr.C.D.Sugumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for



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petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 341, 294(b), 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.443 of 2022 on the file of T-5 Thiruverkadu 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 in respect of the ground case, the detenu was arrested on 26.09.2022 however the impugned detention order was passed only on 12.11.2022, hence there is an unexplained delay in passing the impugned 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 27.02.2023



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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 are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.443 of 2022 on the file of T-5 Thiruverkadu Police Station for the alleged offences under Sections 147, 148, 341, 294(b), 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.C.D.Sugumar, 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 remand in the ground case is



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26.09.2022 but the impugned detention order has been made only on 12.11.2022.

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 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.



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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.

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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned



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detention order dated 12.11.2022 bearing reference No.155/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Prakash @ Lal, aged 29 years, son of Thiru.Kumar, 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.)
26.06.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City, Thiruvallur District.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T5, Thiruverkadu Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

M.SUNDAR, J.,



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and
R.SAKTHIVEL , J.,

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