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H.C.P.No.327 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

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

H.C.P.No.327 of 2023

E.Govindammal

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai.

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

4.The Inspector of Police,
C1 Flower Bazaar Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to direct the
respondents to produce the body of the detenu Mr.Dheena @ Kakka
Dheena, son of Elumalai, male, aged about 24 years, who is detained

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in Central Prison, Puzhal, Chennai, before this Court and pass an order to call for the records of detention order passed by the second respondent in No.259/BCDFGISSSV/2022 dated 26.08.2022 against the petitioner's son Mr.Dheena @ Kakka Dheena, son of Elumalai and set aside the same and set the detenu at liberty.

For Petitioner : Mr.R.Rafi Babu
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.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference No.259/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.203 of 2022 on the file of C1 Flower Bazaar Police Station under Section 174 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] subsequently altered into one under Section 302 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.



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4. Mr.R.Rafi Babu, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, 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 29.07.2022 but the impugned detention order has been made only on 26.08.2022.

6. Mr.R.Muniyapparaj, 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.



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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, 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 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



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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. We are also informed without any dispute by both sides that co-accused in the ground case was also clamped with an identical preventive detention order, co-accused assailed the same vide H.C.P.No.2362 of 2022 and this HCP was allowed in and by an order dated 27.03.2023 by this Bench on the same point.

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 detention order dated 26.08.2022 bearing reference No.259/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Dheena @ Kakka Dheena, aged 23 years,



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son of Thiru.Elumalai, 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.) (M.N.K.,J.)
25.04.2023

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 the Government,
Home, Prohibition and Excise Department,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai.
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C1 Flower Bazaar Police Station,
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- 5.The Public Prosecutor,
High Court, Madras.



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

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