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H.C.P.No.298 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.298 of 2023

Lakshmi
W/o.Kandaiya

.. Petitioner/
Mother of detenu

Vs.

1. The State of Tamil Nadu
Rep. By the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Commissioner of Police/
Detaining Authority
Tiruppur City Police
Sirupooluvapatti
Tiruppur – 641 687
3. The Superintendent of Prison
Central Prison
Coimbatore
Coimbatore – 641 018
4. The Inspector of Police(Crime)

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North Police Station, Tiruppur City
Tiruppur – 641 602

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.C.No.64/G/IS/Tiruppur City/2022 dated 23.08.2022 on the file of second respondent herein to set aside the same and direct the respondents to produce the detenu Nallakannu, S/o.Kandaiya, male aged about 21 years, now confined at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner	:	Mr.D.Amalraj
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John Advocate

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the matter came up for admission on 28.02.2023, this Bench made an order and a scanned reproduction of the same 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 20.02.2023 *inter alia* assailing a detention order dated 23.08.2022 bearing reference C.No.64/G/IS/Tiruppur City/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.D.Amaraj, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case against the detenu is for alleged offences under Sections 452, 342, 392 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.641 of 2022 on the File of Tiruppur City, North Police Station and the same was subsequently altered into Sections 452, 342, 392, 506(ii) and 120(B) of IPC.

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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, Slumgrabbers 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 the order of approval and confirmation were not communicated to the detenu immediately.

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.



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2. Mr. D.Amalraj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

3. Though in the admission Board, learned counsel projected his case on order of approval and confirmation not being communicated to the detenu immediately, today in final disposal, projected his argument on 'live and proximate link' between the grounds of detention and purpose of detention had snapped, as detenu was arrested on 09.07.2022 but the impugned detention order has been made only on 23.08.2022.

4. 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 Prosecutor is unacceptable.

5. We remind ourselves of ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw***



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(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.

6. 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**



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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.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.08.2022 bearing reference C.No.64/G/IS/Tiruppur City/2022 made by the second respondent is set aside and the detenu Thiru.Nallakannu, aged 21 years, son of Thiru.Kandaiya 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.)

29.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

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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5. The Public Prosecutor
Madras High Court, Chennai



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and
M.NIRMAL KUMAR, J.,

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