



WEB COPY



H.C.P.No.303 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

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

H.C.P.No.303 of 2023

Nagavalli

.. Petitioner

Vs

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
O/o.District Collector, Nagapattinam District.
- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Nagapattinam District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 5.The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam 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 C.O.C. No.04/2023 dated 02.02.2023 on the file of the second respondent and quash the



H.C.P.No.303 of 2023

same and direct the respondents to produce the body and person of the petitioner's son name Thiru.Muneesh @ Muneeshwaran, S/o.Soundarajan, aged about 41 years, now confined at Central Prison, Puzhal, Chennai before this 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 15.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 22.02.2023 inter alia assailing a detention order dated 02.02.2023 bearing reference C.O.C.No.04/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, 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 for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 341, 307 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered to Sections 147, 148, 341, 307, 302 and 120(b) IPC in Crime No.371 of 2022 on the file of Nagapattinam Town Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of



WEB COPY



H.C.P.No.303 of 2023

'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 non-application of mind in passing the detention order as the detaining authority has stated that there is an imminent possibility of the detenu coming on bail but no bail application was filed by the detenu.

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 15.03.2023 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.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.371 of 2022 on the file of Nagapattinam Town Police Station for alleged offences under Sections 147, 148, 341, 307 and 302 of IPC. Owing to the nature of the challenge to the impugned preventive



H.C.P.No.303 of 2023

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. In the Admission Board (as would be evident from paragraph 5 of the admission board order dated 15.03.2023) the point that there is non-application of mind on the part of the detaining authority in passing the detention order as he has stated that there is imminent possibility of the detenu coming out on bail when no bail application was filed by him, but in the Final Hearing Board today, learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of surrender in the ground case is 09.12.2022 but the impugned preventive detention order has been made only on 02.02.2023.

6. Mr.E.Raj Thilak, learned State Additional Public Prosecutor,



H.C.P.No.303 of 2023

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. 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.



H.C.P.No.303 of 2023

WEB COPY

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. To be noted, as per the grounds qua impugned preventive detention order, it is clearly a solitary case and the details of the case have been captured in our admission board proceedings more particularly paragraph 3 thereat, however, in the grounds booklet, what is described as a history sheet has been annexed. In our considered view, that really does not save the day qua challenge to the impugned preventive detention order as the impugned preventive



H.C.P.No.303 of 2023

detention order even according to the grounds of impugned preventive detention order is predicated on a solitary case viz., Crime No.371 of 2022 on the file of Nagapattinam Town Police Station for alleged offences inter-alia under Sections 147, 148, 341, 307 and 302 of IPC, which constitutes sole substratum of the impugned preventive detention order.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.02.2023 bearing reference C.O.C.No.04/2023 made by the second respondent is set aside and the detenu Thiru.Muneesh @ Muneeswaran, aged 41 years, Son of Thiru.Soundararajan, 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.)
24.07.2023

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

P.S: Registry to forthwith communicate this order to Jail

Page Nos.7/9



H.C.P.No.303 of 2023

authorities in Central Prison, Puzhal, Chennai.

To

WEB COPY

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
O/o.District Collector, Nagapattinam District.
- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Nagapattinam District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 5.The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.303 of 2023

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

mmi

H.C.P.No.303 of 2023

24.07.2023

Page Nos.9/9