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H.C.P.No.325 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

Coram

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

H.C.P.No.325 of 2023

A.Sunil Kumari

.. Petitioner /
Mother of detenu

VS

1.State of Tamil Nadu represented
By the Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police
Avadi District, Avadi

3.The Superintendent of Prison
Central Prison, Puzhal
Chennai – 600 066

4.State rep. By
Inspector of Police
PEW- Redhills, Avadi 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 2nd respondent pertaining to the order made in No.186/BCDFGISSSV/2022



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dated 21.12.22 in detaining the detenu under the Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondent to produce the detenu by name Aswin Kumar, aged 28 years, son of Anbu who is detained at the Central Prison, Puzhal, Chennai before this court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu
for Mr.Yuvaraj

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

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 detenu assailing a 'preventive detention order dated 21.12.2022 bearing reference No.186/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.



2. When the captioned HCP was listed for admission before this Court, proceedings/orders dated 03.03.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 24.02.2023 inter alia assailing a detention order dated 21.12.2022 bearing reference No.186/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. Mother of the detenu is the petitioner.

3.Mr.S.Yuvaraj, 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 Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.369 of 2022 on the file of Redhills Prohibition Enforcement Wing.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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 the description of items and gross weight of the substances were wrongly mentioned in the Forensic Examination Report.

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.'

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.

4. There is no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.369



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of 2022 on the file of Redhills Prohibition Enforcement Wing for an alleged offence under Section 22(b) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of brevity and convenience]. 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.

5. Mr.A.Venkateswara Babu, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. 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 29.10.2022 but the impugned detention order has been made only on 21.12.2022.

7. 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.



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WEB COPY 8. 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.

9. 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*



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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.

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 detention order dated 21.12.2022 bearing reference 186/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Aswin Kumar, aged 28 years, son of Thiru.Anbu, 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.)
28.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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To

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Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Police
Avadi District, Avadi
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
PEW- Redhills, Avadi District
5. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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