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H.C.P.No.359 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

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

H.C.P.NO.359 OF 2023

P.Kalaivani

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government
Department of Prohibition and Excise (Home)
Fort St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate
Ariyalur District,
Ariyalur.
- 3.The Inspector of Police
Jayankondam Police Station
Jayankondam, Ariyalur District.
- 4.The Superintendent
Central Prison
Tiruchirapalli.
- 5.The Superintendent of Police
Ariyalur,
Ariyalur District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records in Cr.M.P.No.41/2022 dated 02.12.2022 on the file of second respondent herein and set aside the same as illegal and produce the detenu Palraj, Son of Natarajan, aged about 39 years, now confined at Central Prison, Tiruchirapalli, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
for Mr.S.Hariprasad

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 wife of the detenu assailing a 'preventive detention order dated 02.12.2022 bearing reference Cr.M.P.No.41/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2.Impugned preventive detention order has been made under
'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers,



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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 is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.379 of 2022 on the file of Jayankondam Police Station for alleged offences initially registered under Sections 302 and 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 302 and 394 of IPC read with 25(1A) of Arms Act, 1959. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr. Ilayaraja Kandasamy, learned counsel representing Mr. S. Hariprasad, learned on record for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents are before



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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 25.10.2022 but the impugned detention order has been made only on 02.12.2022.

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,



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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 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, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.379 of 2022 on



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the file of Jayankondam Police Station for alleged offences initially registered under Sections 302 and 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 302 and 394 of IPC read with 25(1A) of Arms Act, 1959

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 02.12.2022 bearing reference Cr.M.P.No.41 of 2022 made by the second respondent is set aside and the detenu Thiru. Palraj, aged 39 years, son of Thiru. Natarajan, 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.)

17.07.2023

Index : Yes/No

Neutral Citation : Yes/No

TK

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



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in Central Prison, Tiruchirapalli.

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- To
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Home, Prohibition and Excise Department
Secretariat, Fort St. George, Chennai – 600 009.
 - 2.The District Collector and District Magistrate
Ariyalur District,
Ariyalur.
 - 3.The Inspector of Police
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 - 6.The Public Prosecutor,
High Court, Madras.



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