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H.C.P.No.404 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.404 OF 2023**

Anuradha

.. Petitioner

**VS**

- 1.The Secretary to Government  
Government of Tamil Nadu (Home)  
Prohibition and Excise Department  
Fort St. George,  
Chennai – 600 009.
- 2.The District Collector and District Magistrate  
Vellore District,  
Vellore.
- 3.The Superintendent of Police  
Vellore District,  
Vellore.
- 4.The Superintendent  
Central Prison  
Vellore, Vellore District.
- 5.The Inspector of Police  
Katpadi Police Station  
Katpadi, Vellore 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 relating to the impugned order C3/D.O.No.003/2023 dated 30.01.2023 on the file of the 2<sup>nd</sup> respondent herein and set aside the same as illegal and direct the respondents to produce the detenu namely Divakar Son of Sivasubramani, aged about 20 years, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar

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 the detenu assailing a 'preventive detention order dated 30.01.2023 bearing reference C3/D.O.No.003/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth 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, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral



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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.419 of 2022 on the file of Katpadi Police Station for alleged offences under Sections 302, 201 read with 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] @ 147, 148, 294(b), 302, 201 read with 34 of IPC. 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.G.Vinodhkumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor 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



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has snapped as date of remand in the ground case is 13.12.2022 but the impugned detention order has been made only on 30.01.2023.

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, 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



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**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.419 of 2022 on the file of Katpadi Police Station for alleged offences under Sections 302, 201 read with 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] @ 147, 148, 294(b), 302, 201 read with 34 of IPC.



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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 30.01.2023 bearing reference C3/D.O.No.003/2023 made by the second respondent is set aside and the detenu Thiru. Divakar, aged 20 years, son of Thiru. Sivasubramani, 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.)

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Index : Yes/No

Neutral Citation : Yes

TK

**P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore.**



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