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HCP No.430 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.430 of 2023

G.Nageshwari

.. Petitioner /
Mother of the detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent, Central Prison
Puzhal, Chennai - 66
4. The Inspector of Police (L & O)
S-7, Madipakkam Police Station
Chennai

..Respondents

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 detention order passed by the second respondent pertaining to the detention order passed by the second respondent pertaining to the order made in BCDFGISSSV No.03/2023 dated 05.01.2023 in detaining the detenu under



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Section 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu Manikandan, son of Gunasekaran (late) aged about 29 years, who is detained at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.G.Nirmal Krishnan

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 23.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 15.03.2023 inter alia assailing a detention order dated 05.01.2023 bearing reference No.03/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3..Mr.G.Nirmal Krishnan, 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



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offences under Sections 341, 294(b), 397, 427, 336 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.518 of 2022 on the file of S-7 Madipakkam Police Station.

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, 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 remand order was not properly translated in Tamil, which prevented the detenu from making an effective representation.

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 23.03.2023 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



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Admission listing shall be used in the instant order also.

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3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.518 of 2022 on the file of S-7 Madipakkam Police Station for alleged offences under Sections 341, 294(b), 397, 427, 336 and 506(ii) IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve more into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, 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.

5. At the time of Admission i.e., in the admission board, the point that remand order was not properly translated in Tamil, which prevented the detenu from making an effective representation was urged but today in the final hearing, learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 05.12.2022 but the impugned preventive detention order has been made only on 05.01.2023.



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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 in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned 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 a proposal by a 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 the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.



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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/4304**, **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/7430**, **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. Besides ground case, two adverse cases have been referred to in the grounds of impugned preventive detention order. One adverse case is Crime No.487 of 2022 on the file of S-7 Madipakkam Police Station (occurrence on 05.11.2022) and other is Crime No.511 of 2022 on the file of same police station (occurrence on 29.11.2022) and therefore time consumed remains unexplained.

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



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11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.01.2023 bearing reference BCDFGISSSV No.03/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan, aged 29 years, son of Thiru.Gunasekaran, 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.)
07.08.2023

Index : Yes
Speaking order
Neutral Citation : Yes
gpa

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



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To

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and
R.SAKTHIVEL, J.,

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