



WEB COPY



H.C.P.No.464 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.464 of 2023

Soundarya

.. 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
Chengalpattu District, Chengalpattu
3. The Superintendent of Police
Chengalpattu District, Chengalpattu
4. The Inspector of Police
D-4, Padalam Police Station
Chengalpattu District
5. The Superintendent of Prison
Central Prison – II
Puzhal, 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 in CPT



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No.15/2023 dated 21.02.2023 on the file of second respondent herein and set aside the same as illegal and produce the detenu Sugan @ Pradeep, son of Periyasamy, aged about 29 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
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 28.03.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 20.03.2023 inter alia assailing a detention order dated 21.02.2023 bearing reference CPT No.15/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 394 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into Section 397 of IPC in Crime No.502 of 2022 on the file of



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Padalam 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 some of the documents in the booklet furnished to the detenu are in English version 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 28.03.2023 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.



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3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.502 of 2022 on the file of Padalam Police Station for alleged offences under Sections 394 altered to 397 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.Ilayaraja Kandasamy, 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 has snapped as date of arrest and remand in the ground case is 03.01.2023 but the impugned detention order has been made only on 21.02.2023.

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.



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WEB COPY 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, 19464' [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.

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



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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, out of the two adverse cases, the first adverse case viz., Crime No.83 of 2019 on the file of Uthiramerur Police Station for alleged offences *inter-alia* under Sections 294(b), 307, 506(ii) and 34 of IPC is of the year 2019 and second adverse case viz., Crime No.387 of 2021 on the file of Auroville Police Station for alleged offences *inter-alia* under Sections 341, 294(b), 506(ii), 392 and 397 IPC is of the year 2021 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.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.02.2023 bearing reference No. CPT No.15 of 2023 made by the second respondent is set aside and the detenu



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Thiru.Sugan @ Pradeep, aged 29 years, son of Thiru.Periyasamy, 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 : No

Neutral Citation : No

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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6. The Public Prosecutor,
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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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