



H.C.P.No.477 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.No.477 of 2023

Jayasundari

.. Petitioner

Vs

- 1.The State rep. By the
Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai -9.
- 2.The District Collector & District Magistrate,
Thiruvannamalai District, Thiruvannamalai.
- 3.The Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Kannamangalam Police Station,
Thiruvannamalai District.

.. 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
of the second respondent in connection with order made in

Page Nos.1/9



H.C.P.No.477 of 2023

proceedings in D.O.No.03/2023-C2 dated 05.01.2023 passed against petitioner's son Babu @ Thirumalan, aged 22 years, son of Murugan, who is now confined at Central Prison, Vellore and quash the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Thirugnanam
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 29.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 inter alia assailing a detention order dated 05.01.2023 bearing reference D.O.No.03/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b) and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.430 of 2022 on the file of Kannamangalam Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of



WEB COPY



H.C.P.No.477 of 2023

'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 the documents asked by the petitioner through her representation dated 16.03.2023 were not furnished 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 29.03.2023 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.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.430 of 2022 on the file of Kannamangalam Police Station for alleged offences under Sections 294(b) and 307 IPC subsequently altered into one under Sections 147, 148, 294(b), 307 IPC and again



H.C.P.No.477 of 2023

altered into one under Sections 147, 148, 294(b), 302 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.S.Thirugnanam, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the Admission Board order dated 29.03.2023 (more particularly paragraph 5 thereat), at the time of admission, learned counsel for HCP petitioner projected the point that the documents sought by the petitioner through representation dated 16.03.2023 were not furnished which prevented the detenu from making an effective representation, however, in the final hearing today, learned counsel posited his argument on the point 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 20.10.2022 but the impugned preventive detention order has been made only on 05.01.2023.



H.C.P.No.477 of 2023

WEB COPY

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 **Banik** case law that



H.C.P.No.477 of 2023

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.430 of 2022 on the file of Kannamangalam Police Station for alleged offence inter-alia under Sections 294(b) and 307 of IPC subsequently altered



H.C.P.No.477 of 2023

into one under Sections 147, 148, 294(b), 307 IPC and again altered into one under Sections 147, 148, 294(b), 302 IPC.

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 preventive detention order dated 05.01.2023 bearing reference D.O.No.03/2023-C2 made by the second respondent is set aside and the detenu Thiru.Babu @ Thirumalan, aged 22 years, Son of Thiru.Murugan, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
mmi

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



H.C.P.No.477 of 2023

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai -9.
- 2.The District Collector & District Magistrate,
Thiruvannamalai District, Thiruvannamalai.
- 3.The Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Kannamangalam Police Station,
Thiruvannamalai District.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.477 of 2023

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

H.C.P.No.477 of 2023

31.07.2023

Page Nos.9/9