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H.C.P.No.568 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.568 OF 2023

Monisha

.. Petitioner

VS

1.The Secretary to Government
Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai
Vepery,
Chennai – 600 007.

3.The Superintendent
Central Prison
Puzhal,
Chennai – 600 066.

4.The State Rep. By
The Inspector of Police (L&O)
N-1, Royapuram Police Station,
Chennai.

.. Respondents



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PRAAYER: 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 01/ BCDFGISSSV/2023 dated 05.01.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu Rishi Kannan, Son of Gunasekaran aged 24 years, residing at No.111, A Block NTO Kuppam, Thiruvothiyur, Chennai – 600 019 now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.W.M.Abdul Azeez
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] came up for admission on 18.04.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.)

Captioned Habeas Corpus Petition has been filed in this Court on 29.03.2023 *inter alia* assailing a detention order dated 05.01.2023 bearing reference No 01/HC/DEGIS/SSV/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 detainee is the petitioner herein.

3. Learned counsel for petitioner submits that ground case against the detainee is for alleged offences under Sections 341, 481, 294(b), 323, 724, 427, 397 and 506(G) of 'The Indian Penal Code (45 of 1860)' (hereinafter 'IPC' for the sake of convenience and clarity) in Crime No.546 of 2023 on the file of NI Royapuram Police Station.

4. The aforementioned detention order has been made on the premise that the detainee is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Doodleggers, Cyber law

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offenders, Drug-offenders, Forest-offenders, Gasolinas, 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 pages in the grounds booklet furnished to the detainee are not legible which prevented the detainee 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.

[M.S.L.]

[M.N.K.J.]

18.04.2023

c/c



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2.The aforementioned order made in the 18.04.2023

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 are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.546 of 2022 on the file of N1 Royapuram Police Station for alleged offences under Sections 341, 451, 294(b), 323, 324, 427, 397 and 506(ii) 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.W.M.Abdul Azeez, 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



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detention has snapped as date of arrest and remand in the ground case is 07.12.2022 but the impugned detention order has been made only on 05.01.2023.

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



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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, out of the four adverse cases, the first adverse case viz., Crime No.1174 of 2018 on the file of N2 Kasimedu Police Station for alleged offences *inter-alia* under Sections 294(b), 324, 307 of IPC @ 294(b), 323, 324, 506(ii) read with 34 of IPC is of the year 2018;



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second adverse case viz., Crime No.821 of 2019 on the file of N2 Kasimedu Police Station for alleged offences inter-alia under Sections 341, 294(b), 307 and 506(ii) of IPC is of the year 2019; third adverse case viz., Crime No.03 of 2020 on the file of N4 Fishing Harbour Police Station for alleged offences under Sections 147, 148, 294(b), 341, 307, 506(ii) of IPC @ 294(b), 341, 324, 326, 307 and 506(ii) of IPC is of the year 2020 and fourth adverse case viz., Crime No.30 of 2021 on the file of N2 Kasimedu Police Station for alleged offences inter-alia under Sections 341, 294(b), 307 and 506(ii) of 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 05.01.2023 bearing reference Memo No. 01/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Rishi Kannan, aged 24 years, son of Thiru.



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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.]

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Index : Yes

Neutral Citation : Yes

Speaking

TK

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

To

- 1.The Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police
Greater Chennai
Vepery, Chennai – 600 007.
- 3.The Superintendent
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N-1, Royapuram Police Station,
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- 5.The Public Prosecutor
High Court of Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

TK

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