



WEB COPY



HCP No.542 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.542 of 2023

Indumathi
W/o.Babu

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The District Magistrate and District Collector
Thiruvallur District
Thiruvallur.
3. The Superintendent of Police
Thiruvallur District
Thiruvallur.
4. The Inspector of Police
Arambakkam Circle Police
Thiruvallur District.
5. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai-600 066.
..Respondents



HCP No.542 of 2023

WEB COPY

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 in Memo No.41/BCDFGISSSV/2022 dated 21.08.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru.Gowtham @ Kulla, son of Babu, aged about 21 years, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set the petitioner's son Thiru.Gowtham @ Kulla, son of Babu, aged about 21 years, the detenu herein at liberty.

For Petitioner	:	Mr.R.Muthukumar
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 11.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 03.04.2023 inter alia assailing a detention order dated 21.08.2022 bearing reference BCDFGISSSV No.41 of 2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



HCP No.542 of 2023

WEB COPY

2. *Mother of the detenu is the petitioner.*

3. *Mr.R.Muthukumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu was initially registered for an offence under Section 174 Cr.P.C and subsequently altered to 120(B), 147, 148, 294(b), 323, 324, 302 read with Section 201 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.86 of 2022 on the file of Padhirivedu 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 'live and proximate link' between the grounds of detention and purpose of detention had snapped as there is a delay in passing the detention order.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

7. *Mr.S.Raja Kumar, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*



HCP No.542 of 2023

2. The aforementioned order made in the 11.04.2023 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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.86 of 2022 on the file of Padhirivedu Police Station for alleged offences under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] (Suspicious Death) and subsequently, altered into Sections 120(B), 147, 148, 294(b), 323, 324, 302 read with 201 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.R.Muthukumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



HCP No.542 of 2023

WEB COPY

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 in the ground case is 16.06.2022 but the impugned preventive detention order has been made only on 21.08.2022. Learned counsel for petitioner submits that the co-accused in the ground case was also clamped on a similar preventive detention order and the same was allowed by this Bench vide order dated 27.03.2023 in H.C.P.No.1886 of 2022.

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



HCP No.542 of 2023

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.

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.



HCP No.542 of 2023

WEB COPY

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.08.2022 bearing reference B.C.D.F.G.I.S.S.V.No.41/2022 made by the second respondent is set aside and the detenu Thiru.Gowtham @ Kulla, male, aged 21 years, son of Thiru.Babu 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison-II, Puzhal, Chennai-66.



WEB COPY



HCP No.542 of 2023

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

mk

To

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The District Magistrate and District Collector
Thiruvallur District
Thiruvallur.
3. The Superintendent of Police
Thiruvallur District
Thiruvallur.
4. The Inspector of Police
Arambakkam Circle Police
Thiruvallur District.
5. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai-600 066.
6. The Public Prosecutor
High Court, Madras.

H.C.P.No.542 of 2023



WEB COPY



HCP No.542 of 2023

26.06.2023