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H.C.P.No.577 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.577 of 2023

Rashya
W/o.Vignesh

.. Petitioner /
Wife of the detenu

Vs.

State Rep. by

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai-9
2. The District Collector and District Magistrate
Tiruvarur District
3. The Superintendent of Police
Tiruvarur District
4. The Superintendent of Police
Central Prison, Tiruchirappalli

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5. The Inspector of Police
Harithuvaramangalam Police Station
Tiruvarur District

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records in C.O.C.No.04/2023 dated 31.01.2023 on the file of the District Collector and District Magistrate, Tiruvarur, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Vignesh, son of Kumar, aged 23 years, now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner	:	Mr.R.Siranjeevi
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 13.04.2023, this Court made the following order:

'H.C.P.No.577 of 2023

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



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Court on 06.04.2023 inter alia assailing a detention order dated 31.01.2023 bearing reference C.O.C.No.04/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth 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 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(m) read with 6 of 'the Protection of Children from Sexual Offences Act, 2012 [No.32 of 2012]' [hereinafter 'POCSO Act' for the sake of convenience and clarity] in Crime No.01 of 2023 on the file of Harithuvaramangalam Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 the family members of the detenu were not informed about the detention which prevented the detenu from making an



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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 Admission Board order captures the essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.R.Siranjeevi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that the



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family members of the detenu were not informed about the detention which prevented the detenu from making an effective representation, however in the final hearing board today learned counsel submitted that the detenu was arrested on 01.01.2023 but the impugned preventive detention order has been made only on 31.01.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

5. 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.

6. 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



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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.

7. 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



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2023:MHC:1159 and a series of other orders in HCP cases.

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8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.01 of 2023 on the file of Harithuvaramangalam Police Station for alleged offences *inter-alia* under Sections 363 of IPC and Sections 5(m) read with 6 of POCSO Act.

9. Learned Prosecutor informs us that in the solitary ground case charge sheet has been filed within the statutorily prescribed time on 18.02.2023 and the same has been taken on file as Special S.C.No.14 of 2023 by the Additional Mahila Court, Tiruvarur. This means that the detenu may have to seek regular bail. If the detenu seeks regular bail before the trial Court, the same shall be considered on its own merits and in accordance with law by the trial Court untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in a habeas legal drill.

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 31.012023 bearing reference C.O.C.No.04/2023 made by the second respondent is set aside and the detenu Thiru.Vignesh, aged 23 years, male, son of Thiru.Kumar 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.)

14.08.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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1. The Secretary to Government
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5. The Inspector of Police
Harithuvaramangalam Police Station
Tiruvarur District
6. The Public Prosecutor
High Court, Madras.



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

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