



H.C.P.No.629 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**

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Suriya

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Magistrate and District Collector,
Dharmapuri.
- 3.The Superintendent of Police,
Dharmapuri District, Dharmapuri.
- 4,The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Eriyur Police Station, Dharmapuri.

.. 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 connection with the order of detention passed by the second respondent dated 31.01.2023 in S.C.No.01/2023 against the petitioner's father Murugesan, male, aged 47 years, son of Mannathan, who is confined at Central Prison, Salem and set aside

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the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.V.R.Annagandhi

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 20.04.2023, the following order was made:

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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 12.04.2023 inter alia assailing a detention order dated 31.01.2023 bearing reference S.C.No.01/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Son of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 5(m), 5(l) and 6 of Protection of Children from Sexual Offences, Act 2012 in Crime No.161 of 2022 on the file of Eriyur Police Station.



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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, Slumgrabbers 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 detenu are only in English language 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 Admission Board captures all 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public



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Prosecutor for all the respondents are before us.

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4. To be noted, 'order dated 31.01.2023 bearing reference S.C.No.01/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5. 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 some of the pages in the grounds booklet furnished to the detenu are only in English language which prevented the detenu from making an effective representation, however in the final hearing today, 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 06.12.2022 but the impugned preventive detention order has been made only on 31.01.2023.



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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 this point has two facets. One facet is 'unreasonable delay' and other facet is 'unexplained delay'. We find that the captioned matter falls



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under latter facet i.e., unexplained delay.

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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. As regards ground case, this Court is informed that the same has now been taken on file as Spl.S.C.No.21 of 2023 on the file of 'Fast Track Mahila Court, Dharmapuri' (hereinafter 'Trial Court' for the sake of convenience). Learned Prosecutor on instructions submits that in the ground case in the Trial Court, final report i.e., charge sheet has been filed within the prescribed 90 days time. Therefore, *de hors*



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this order, the detenu may have to move for regular bail in the Trial Court. If the detenu moves for regular bail in 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 is being made for the limited purpose of testing the impugned preventive detention order in a habeas legal drill.

10. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.161 of 2022 on the file of Eriyur Police Station for alleged offences inter-alia under Sections 5(m), 5(l) and 6 of POCSO Act.

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.01.2023 bearing reference S.C.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Murugesan, aged 47 years, Son of Thiru.Mannathan, is directed to be set at liberty forthwith, if not required in connection



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with any other case / cases. There shall be no order as to costs.

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(M.S.,J.) (R.S.V.,J.)
14.08.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Magistrate and District Collector,
Dharmapuri.
3. The Superintendent of Police,
Dharmapuri District, Dharmapuri.
4. The Superintendent of Prison,
Central Prison, Salem.
5. The Inspector of Police,
Eriyur Police Station, Dharmapuri.
6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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