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H.C.P.No.646 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

Coram

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

H.C.P.No.646 of 2023

Mageshwari

.. Petitioner/
Wife of the detenu

VS

- 1.The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
 - 2.The District Collector and District Magistrate
Vellore District, Vellore
 - 3.The Superintendent of Police,
Vellore District, Vellore
 4. The Superintendent
Central Prison, Vellore, Vellore District
 5. The Inspector of Police
Vellore North (Law and Order) Police Station
Vellore, Vellore 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 relating to the impugned order C3/D.O No.81/2022 dated 04.08.2022 on the file of



H.C.P.No.646 of 2023

the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce Munna @ Akesha, son of Kalesha, aged 37 years, now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Vinoth Kumar

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 04.08.2022 bearing reference C3/D.O.No.81/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. When the captioned HCP was listed for admission before this Court, proceedings/orders dated 20.04.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 13.04.2023 inter alia assailing a detention order dated 04.08.2022 bearing reference



C3/D.O.No.81/2022 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 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], subsequently altered into Sections 294(b) and 302 of IPC in Crime No.252 of 2022 on the file of Vellore North (Law and Order) 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 has snapped as the detenu was arrested on 13.06.2022 but the impugned detention order was passed on 04.08.2022.

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



H.C.P.No.646 of 2023

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

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.

4. There is no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.252 of 2022 on the file of Vellore North Police Station for the 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] altered to 294(b) and 302 of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

5. Mr.G.Vinoth Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all



H.C.P.No.646 of 2023

respondents are before us.

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6. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 13.06.2022 but the impugned detention order has been made only on 04.08.2022.

7. 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.

8. 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 6463***]. 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,



H.C.P.No.646 of 2023

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 under latter facet i.e., unexplained delay.

9. 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.

10. Before concluding, we also remind ourselves that preventive



H.C.P.No.646 of 2023

detention is not a punishment and HCP is a high prerogative writ.

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Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.08.2022 bearing reference C3/D.O.No.81/2022 made by the second respondent is set aside and the detenu Thiru.Munna @ Akesha, aged 37 years, son of Thiru.Kalesha, is directed to be set at liberty forthwith, if not required in connectio

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

(M.S.,J.) (R.S.V.,J.)
20.06.2023

Index : Yes/No
Neutral Citation : Yes/No
gpa

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



H.C.P.No.646 of 2023

To

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Prohibition and Excise Department,
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2. The District Collector and District Magistrate
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3. The Superintendent of Police,
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6. The Public Prosecutor,
High Court, Madras.



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H.C.P.No.646 of 2023

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

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