



H.C.P.No.655 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.655 of 2023

Indira

W/o.Sathiyaraj

.. Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
2. District Collector and District Magistrate of
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent of Police
Tiruvannamalai District
Tiruvannamalai.
4. The Superintendent of Prison
Central Prison, Vellore-2.
5. The Inspector of Police
Tiruvannamalai PEW Police Station
Tiruvannamalai District.

..Respondents

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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 connection with the order of Detention passed by the second respondent dated 05.04.2023 in D.O.No.39/2023-C2 against the petitioner's Husband Sathiyaraj, Male aged 37 years S/o. Jeyaraman, who is confined at Central Prison Vellore and set aside the same and direct the respondents to produce the detenue before the Honble Court and set him at Liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court 'For Admission' on 21.04.2023, the following proceedings / order was made:

'HCP No.655 of 2023

M.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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



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Captioned Habeas Corpus Petition has been filed in this Court on 17.04.2023 inter alia assailing a detention order dated 05.04.2023 bearing reference D.O.No.39/2023-C2 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 4(1)(g), 4(1)(aaa) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 in Crime No.176 of 2023 on the file of Tiruvannamalai Prohibition Enforcement Wing.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 date of arrest in the ground case is on 18.02.2023 but the impugned detention order has been made only on 05.04.2023.

6. Prima facie case made out for admission. Admit. Issue



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Rule nisi returnable by four weeks.

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

3. The aforementioned Admission Board order captures 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. To be noted, 'preventive detention order dated 05.04.2023 bearing reference D.O.No.39/2023-C2' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4.Mr.D.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. Elaborating on paragraph No.5 of the Admission Board order, learned counsel submitted that the detenu was arrested on 18.02.2023 but the impugned preventive detention order has been made only on 05.04.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

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 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



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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.

9. Besides ground case, two adverse cases have been referred to in the grounds of impugned preventive detention order. One adverse case is Crime No.1016 of 2021 on the file of Tiruvannamalai Prohibition



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Enforcement Wing (occurrence was on 19.08.2021) and other is Crime No.175 of 2022 on the file of Vettavalam Police Station (occurrence was on 27.07.2022) 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. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.04.2023 bearing reference D.O.No.39/2023-C2 made by the second respondent is set aside and the detenu Thiru.Sathiyaraj, male, aged 37 years, son of Thiru.Jeyaraman, 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.)

12.09.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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

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To

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
2. District Collector and District Magistrate of
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent of Police
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6. The Public Prosecutor
High Court, Madras.

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