



H.C.P.No.732 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.732 of 2023

Tmt.Mageshwari
W/o.Nehruji

.. Petitioner

Vs.

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai
3. The Superintendent of Police
Tiruvannamalai
4. The Superintendent of Prison
Central Prison, Vellore
5. State by
Inspector of Police
Arni Town 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 pertaining to the order of detention passed by the second respondent herein and made in D.O.No.28/2023-C2 dated 04.03.2023 and to set aside the same and direct the third respondent to produce the detenu viz., Thiru.Nehruji, aged 32 years, son of Devaraj now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.A.P.Sathyamurthy
for Mr.M.Velmurugan

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 01.06.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 21.04.2023 inter alia assailing a detention order dated 04.03.2023 bearing reference D.O.No.28/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the



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Sponsoring Authority.

2. To be noted, wife of the detenu is the petitioner.

3. Mr.C.Loganathan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu was registered for Man Missing and subsequently altered to Section 364A of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and again altered to Sections 147, 364A, 302, 201 read with 120(B) of IPC in Crime No.10 of 2023 on the file of Arani Town 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 some of the pages in the grounds of detention furnished to the detenu were illegible 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



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captioned Habeas Corpus Petition accordingly.'

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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.A.P.Sathyamurthy, learned counsel representing the 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 dated 01.06.2023, at the time of admission, the point that some of the pages in the grounds of detention furnished to the detenu were illegible, which prevented the detenu from making an effective representation was raised but in the final hearing, learned counsel submitted that the detenu was arrested on 15.01.2023 but the impugned preventive detention order has been made only on 04.03.2023 and therefore, 'live and proximate link between the grounds and purpose of detention' has snapped.

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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 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.



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

8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.10 of 2023 on the file of Arni Town Police Station which was initially registered for 'Man Missing', subsequently altered to 364A of IPC and again altered to Sections 147, 364A, 302, 201 read with 120(B) of IPC.

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

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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.03.2023 bearing reference D.O.No.28/2023-C2 made by the second respondent is set aside and the detenu Thiru.Nehruji, male, aged 32 years, son of Thiru.Devaraj, 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.)

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Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai
3. The Superintendent of Police
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4. The Superintendent of Prison
Central Prison, Vellore
5. Inspector of Police
Arni Town Police Station
Tiruvannamalai District
6. The Public Prosecutor
High Court, Madras.



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

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