



H.C.P.No.706 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.706 of 2023**

K.Manjula

.. Petitioner

Vs

- 1.The State of Tamil Nadu  
Rep. By its Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,  
Perambalur District, Perambalur.
- 3.The Superintendent of Police,  
Perambalur District, Perambalur.
- 4.The Superintendent of Prison,  
Central Prison, Tiruchirappalli – 20.
- 5.The Inspector of Police,  
Perambalur Police Station,  
Perambalur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records from the 2<sup>nd</sup> respondent in connection with order Cr.M.P.No.03/2023 dated 13.03.2023 and quash the same and produce

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the petitioner's husband namely Karthik, S/o.Ganesan, aged 27 years, now confined in Central Prison, Tiruchirappalli under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Ms.S.Nadhiya  
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 28.04.2023, 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 21.04.2023 inter alia assailing a detention order dated 13.03.2023 bearing reference Cr.M.P.No.03/2023 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 detenu is the petitioner.*



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3. Learned counsel for the petitioner submits that the ground case qua the detenu is for alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.882 of 2022 on the file of Perambalur 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 13.12.2022 but the impugned detention order was passed on 13.03.2023.

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 all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this final order also for the sake of convenience and clarity. To be noted, 'detention order dated 13.03.2023 bearing



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reference Cr.M.P. No.03/2023' made by the 'detaining authority' shall hereinafter be referred to as 'impugned preventive detention order' in this final order for the sake of brevity, convenience and clarity.

3. Ms.S.Nadhiya, 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 live and proximate link between the grounds of detention and purpose of detention has snapped.

5. Elaborating on the above submission, in the Final Hearing Board today, Ms.S.Nadhiya, 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 13.01.2023 but the impugned preventive detention order has been made only on 13.03.2023.



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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



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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. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.882 of 2022 on the file of Perambalur Police Station for alleged offence inter-alia under Section 302 of IPC.



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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 13.03.2023 bearing reference Cr.M.P.No.3 of 2023 made by the second respondent is set aside and the detenu Thiru.Karthik, aged 27 years, Son of Thiru.Ganesan, 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  
Neutral Citation : Yes  
mmi

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

To

- 1.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,  
Perambalur District, Perambalur.
- 3.The Superintendent of Police,  
Perambalur District, Perambalur.

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4.The Superintendent of Prison,  
Central Prison, Tiruchirappalli – 20.

5.The Inspector of Police,  
Perambalur Police Station,  
Perambalur.

6.The Public Prosecutor,  
High Court, Madras.



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

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