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HCP No.724 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.724 of 2023

Carolyn Pushparani
W/o.Arokiyasamy

.. Petitioner

Vs.

1. The State of Tamil Nadu
represented by
The Principal Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The District Collector and District Magistrate
Mayiladuthurai & District.
3. The Superintendent
Mayiladuthurai & District.
4. The Superintendent
Central Prison
Trichy & District.
5. The Inspector of Police
Sirkazhi Circle
Mayiladuthurai District.

..Respondents



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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 connected with the impugned order of detention passed by the 2nd respondent in C.O.C.No.49/2022 dated 03.11.2022 and quash the same, consequently, directing the respondents to produce the detenu namely, petitioner's son Ajith, son of Arokiyasamy, aged about 27 years, detained in Central Prison, Trichy before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.G.Balamanikandan
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 mother of the detenu assailing a 'preventive detention order dated 03.11.2022 bearing reference C.O.C.No.49/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.



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2. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.163 of 2022 on the file of Sirkazhi Police Station for alleged offences under Sections 341, 294(b), 324 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 341, 294(b), 324, 506(ii) and 307 of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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

5. 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 20.09.2022 but the impugned preventive detention order has been made only on 03.11.2022.

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



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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.

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



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Madras High Court being **2023:MHC:1159** and a series of other orders in HCP cases.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.11.2022 bearing reference C.O.C.No.49/2022 made by the second respondent is set aside and the detenu Thiru.Ajith, male, aged 27 years, son of Thiru.Arokiyasamy, 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

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



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To

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6. The Public Prosecutor
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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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