

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

H.C.P.No.751 of 2023

M.Kumar

.. Petitioner

Vs

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
2. District Collector and District Magistrate of
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,
Vellore.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Inspector of Police,
Katpadi Railway Police Station,
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 detention order passed by the second respondent

pertaining to the order made in C3/D.O./119/2022 dated 25.12.2022 in detaining the detenu under Section 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Hemaraj, son of Kumar, aged about 25 years, who is detained at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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, the following order was made:

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

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

Captioned Habeas Corpus Petition has been filed in this Court on 25.04.2023 inter alia assailing a detention order

dated 25.12.2022 bearing reference C3/D.O.No.119/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.G.Nirmal Krishnan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offences under Sections 392 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 in Crime No.131 of 2022 on the file of Katpadi Railway 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, Sandoffenders, 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 booklet 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 captioned Habeas Corpus Petition accordingly.'

2. The aforementioned Admission Board captures all 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.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. To be noted, 'order dated 25.12.2022 bearing reference C3/D.O.No.119/2022' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5. 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 some of the pages in booklet furnished to the detenu were illegible, however in the final hearing today, 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 23.11.2022 but the impugned preventive detention

order has been made only on 25.12.2022.

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 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 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. As regards ground case, this Court is informed that the same has now been taken on file as S.C.No.68 of 2023 on the file of 'Mahila Court, Vellore' (hereinafter 'Trial Court' for the sake of convenience). Learned Prosecutor on instructions submits that in the ground case in

the Trial Court, final report i.e., charge sheet has been filed within the prescribed 90 days time i.e., on 09.01.2023. Therefore, *de hors* this order, the detenu may have to move for regular bail in the Trial Court. If the detenu moves for regular bail in the Trial Court, the same shall be considered on its own merits and in accordance with law by the Trial Court untrammelled by this order which is being made for the limited purpose of testing the impugned preventive detention order in a habeas legal drill.

10. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.131 of 2022 on the file of Katpadi Railway Police Station for alleged offences inter-alia under Sections 392, 307 of IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned

preventive detention order dated 25.12.2022 bearing reference No.C3/D.O.No.119/2022 made by the second respondent is set aside and the detenu Thiru.Hemaraj, aged 25 years, Son of Thiru.Kumar, 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.)
14.08.2023

Index : Yes

Neutral Citation : Yes

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
2. The District Collector and District Magistrate of
Vellore District, Vellore – 9.
- 3.The Superintendent of Police, Vellore.
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- 5.The Inspector of Police,
Katpadi Railway Police Station,
Vellore District.
- 6.The Public Prosecutor, High Court, Madras.

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