



H.C.P.No.847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.847 of 2023

S.Abina
W/o.Srithar

.. Petitioner

Vs.

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, chennai-600 009.
2. District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai District.
3. The Superintendent of Police
Tiruvannamalai
Tiruvannamalai District.
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, calling for the records pertaining to the order of detention passed by the second respondent herein and made in D.O.No.31/2023-C2 dated 04.03.2023 and to set aside the same and directing the fourth respondent to produce the detenu petitioner's husband viz., Srithar, aged 34 years, S/o.Ganapathy, now confined Central Prison, Vellore this Honble Court and thereby setting him at Liberty.

For Petitioner : Mr.Nagoor Moideen
representing Mr.R.Krishnakumar
For Respondents : Mr.A.Gokulakrishnan
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 wife of the detenu assailing a 'preventive detention order dated 04.03.2023 bearing reference D.O.No.31/2023-C2' [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

WEB COM 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 no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.10 of 2023 on the file of Arni Town Police Station registered for 'Man Missing' and subsequently altered into Section 364A of The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and again altered into Sections 147, 364A, 302, 201 of IPC read with 120(B) 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.M.Nagoor Moideen, learned counsel representing the counsel on record for petitioner and Mr.A.Gokulakrishnan, 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 19.01.2023 but the impugned preventive detention order has been made only on 04.03.2023.

6. Mr.A.Gokulakrishnan, 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*



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(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.

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**



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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.10 of 2023 on the file of Arni Town Police Station registered for 'Man Missing' and subsequently altered into Section 364A of IPC and again altered into Sections 147, 364A, 302, 201 of IPC read with 120(B) of IPC.

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 04.03.2023 bearing reference D.O.No.31/2023-C2 made by the second respondent is set aside and the detenu Thiru.Srithar, male, aged 34 years, son of Thiru.Ganapathi, is



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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

Neutral Citation : Yes

mk

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

To

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai District.
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6. The Public Prosecutor
High Court, Madras.

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and
R.SAKTHIVEL, J.,

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