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H.C.P.No.758 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.758 of 2023

Elan Mery

.. Petitioner/
Wife of the detenu

vs

1. The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai – 600 009

2.The Commissioner of Police,
Chennai City Police, Greater Chennai
Commissioner Office, Vepery
Chennai – 600 007

3. The Inspector of Police
J-9 Thuraipakam Police Station
Chennai

4. The Superintendent of Police
Central Prison – II
Puzhal, Chennai

.. 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 in



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No.103/BCDFGISSSV/2023 dated 17.04.2023 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Abi @ Abinash, son of Madhan, aged 24 years before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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 the wife of the detenu assailing a 'preventive detention order dated 17.04.2023 bearing reference BCDFGISSSV No.103 of 2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned 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



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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.82 of 2023 on the file of J-9 Thuraipakkam Police Station for alleged offences under Sections 147, 148 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr. Ilayaraja Kandasamy, 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 petitioner was arrested on 09.03.2023 but the impugned detention order has been made only on 17.04.2023.

6. Mr. E. Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated



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and time was consumed in this exercise. Considering the facts and circumstances of the case 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 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***,



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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. Besides ground case, there is one adverse case in Crime No.294 of 2022 on the file of J-9 Thuraipakkam Police Station (occurrence was on 26.08.2022) and therefore, the delay remains unexplained.

10. This Court is also informed that co-accused in the ground case was also clamped with similar preventive detention order, the same was assailed vide H.C.P.No.756 of 2023 and the same has been allowed by this Court vide order dated 31.08.2023.

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

12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.04.2023 bearing reference BCDFGISSSV No.103/2023 made by the second respondent is set aside and the detenu Thiru.Abi @ Abinesh, S/o.Thiru.Madhan, aged about 24 years, is directed to



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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.)
08.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

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



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To

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Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai – 600 009
2. The Commissioner of Police,
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5. The Public Prosecutor
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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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