



H.C.P.No.771 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

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

H.C.P.No.771 of 2023

Jansi

.. Petitioner

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 – 9.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery, Chennai – 7.
- 3.The Inspector of Police,
J-9 Thuraipakkam Police Station, Chennai.
- 4.The Superintendent of Prison,
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
No.105/BCDFGISSSV/2023 dated 17.04.2023 on the file of the second

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respondent herein and set aside the same as illegal and produce the detenu Mavu @ Xavier, son of Bernat, aged 26 years, now confined at Central Prison, Puzhal, Chennai, 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 mother of the detenu assailing a 'preventive detention order dated 17.04.2023 bearing reference BCDFGISSSV No.105/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, third respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers,



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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. 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, 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 preventive 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.



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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 09.03.2023 but the impugned preventive 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 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

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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.



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9. The adverse case cited in the grounds of impugned preventive detention order pertains to the year 2020 (date of occurrence 23.09.2020) and therefore time consumed remains unexplained.

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 17.04.2023 bearing reference BCDFGISSSV No.105/2023 made by the second respondent is set aside and the detenu Thiru.Mavu @ Xavier, aged 26 years, Son of Thiru.Bernat, 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.)
01.09.2023

Index : Yes
Neutral Citation : Yes
mmi

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

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery, Chennai – 7.
- 3.The Inspector of Police,
J-9 Thuraipakkam Police Station, Chennai.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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