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H.C.P.No.1073 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

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

H.C.P.NO.1073 OF 2023

Gunasekaran

.. Petitioner

Vs.

1.The Secretary to the Government
Home Prohibition & Excise Department
Secretariat,
Chennai – 600 009.

2.District Collector and District Magistrate
Mayiladuthurai District,
Mayiladuthurai.

3.The Superintendent of Police
Mayiladuthurai,
Mayiladuthurai District.

4.The Superintendent
Central Prison
Thiruchirappalli.



H.C.P.No.1073 of 2023

5.State Rep. By
The Inspector of Police
Sirkazhi Police Station
Mayiladuthurai District.

.. Respondents

PRAYER: 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, to call for the records in connection with the order of detention passed by the second respondent dated 04.11.2022 in Memo. C.O.C.No.50/2022, against the petitioner son Senthil @ Senthilnathan, M/24 years, Son of Gunasekaran, who is confined at Central Prison, Thiruchirappalli, and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

In the captioned matter, the impugned preventive detention order which is being assailed is dated 04.11.2022 and bears reference C.O.C.No.50 of 2022. However, the captioned matter has been filed only on 09.05.2023. In terms of chronological listing, in this Court, HCP matters are listed chronologically based on the date of detention order. In this view of the matter, the captioned matter has already got its turn or in other words, the turn of the captioned matter has reached in the chronological sequence.



H.C.P.No.1073 of 2023

2. Though very many points have been urged in the support affidavit, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the lone point that 'live and proximate link' between grounds of detention and purpose of detention has snapped.

3. Admit. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all respondents.

4. In the light of the opening paragraph, the main matter is taken up.

5. Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the father of the detenu assailing a 'preventive detention order dated 04.11.2022 bearing reference C.O.C.No.50 of 2022 [hereinafter 'impugned 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 detention order has been made by second respondent.

6. Impugned detention order has been made under 'The Tamil



H.C.P.No.1073 of 2023

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.

7. There are two adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.401 of 2022 on the file of Sirkazhi Police Station for alleged offences under Sections 341, 294(b), 332, 324, 506(2) and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with 3(1) of Tamil Nadu Property (Prevention of Damages & Loss) Act, 1992. 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.

8. Mr.A.Saranraj, learned counsel on record for petitioner and



H.C.P.No.1073 of 2023

Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

9. 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 06.09.2022 but the impugned detention order has been made only on 04.11.2022.

10. 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.

11. 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



H.C.P.No.1073 of 2023

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.

12. 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**



H.C.P.No.1073 of 2023

reported vide Neutral Citation of Madras High Court being
WEB C 2023:MHC:1159 and a series of other orders in HCP cases.

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

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.11.2022 bearing reference C.O.C.No.50 of 2022 made by the second respondent is set aside and the detenu Thiru. Senthil @ Senthilnathan, aged 24 years, Son of Thiru. Gunasekaran 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.)

28.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

TK

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

To

7/9



H.C.P.No.1073 of 2023

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H.C.P.NO.1073 OF 2023

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