



WEB COPY



H.C.P.No.838 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

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

H.C.P.No.838 of 2023

Somappa
S/o.Krishnappa

.. Petitioner/Father of Detenu

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Prohibition and Excise Department (Home),
Chennai – 600 009.

2.The District Collector and District Magistrate,
Detaining Authority,
Office of the District Collector,
Krishnagiri District.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Krishnagiri District.

4.The Superintendent of Prison,
Salem Central Prison,
Salem.

5.The Inspector of Police,
Berigai Police Station,
Krishnagiri District.

.. Respondents



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WEB COPY 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 detenu's detention order passed by the 2nd respondent vide S.C.No.06/2023 dated 21.03.2023 and set aside the same and produce the petitioner's son Thammanna @ Sridhar, S/o.Somappa, Male aged 25 years, now detained in Salem Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Madhan

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 father of the detenu assailing a 'preventive detention order dated 21.03.2023 bearing reference S.C.No.06/2023' [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, fifth respondent is the sponsoring authority.



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2. Impugned preventive 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 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. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.27 of 2023 on the file of Berigai Police Station for an alleged offence under Section 364(A) 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.K.Madhan, 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 remand in the ground case is 28.01.2023 but the impugned detention order has been made only on 21.03.2023.

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 noticing the trajectory the matter took, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose



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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. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.27 of 2023 on the file of



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Berigai Police Station for an alleged offence *inter-alia* under Section 364(A)
of I.P.C.

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 detention order dated 21.03.2023 bearing reference S.C.No.06/2023 made by the second respondent is set aside and the detenu Thiru.Thammanna @ Sridhar, aged 25 years, son of Thiru.Somappa, 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.)
11.09.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



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To

- 1.The Secretary to Government,
Prohibition and Excise Department (Home),
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Detaining Authority,
Office of the District Collector,
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- 3.The Superintendent of Police,
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Salem Central Prison,
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- 5.The Inspector of Police,
Berigai Police Station,
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- 6.The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.
and
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