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HCP No.857 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.857 of 2023

Prevenkumar

.. Petitioner

Vs.

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009
2. The District Collector and District Magistrate
Thiruvannamalai District, Thiruvannamalai
3. The Superintendent of Police
Thiruvannamalai District, Thiruvannamalai
4. The Superintendent of Police
Central Prison,
Vellore
5. The Inspector of Police
All Women Police Station
Thiruvannamalai District

..Respondents



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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 connection with the order of detention passed by the second respondent dated 08.05.2023 in D.O.No.46/2023-C2, petitioner/detenu Prevenkumar, male, aged 23 years, son of Raman, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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 detenu assailing a 'preventive detention order dated 08.05.2023 bearing reference D.O.No.46/2023-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.

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



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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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is one adverse case. The ground case which constitutes substantial part of the impugned preventive detention order is Crime No.02 of 2023 on the file of All Women Police Station, Tiruvannamalai for alleged offences under Sections 376(2)(n) and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 5(l) and 6 of 'The Protection of Children from Sexual Offences Act, 2012 (32 of 2012)' [hereinafter 'POCSO Act' for the sake of brevity] and 67B of 'Information Technology Act, 2000' [hereinafter 'IT Act' for the sake of brevity and convenience]. 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.D.Balaji, 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 date of arrest in the ground case is 26.03.2023 but the impugned preventive detention order has been made only on 08.05.2023.

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 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 (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



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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 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. Besides ground case, there is one adverse case in Crime No.201 of 2022 on the file of Thanipadi Police Station (occurrence was on 02.05.2022) and therefore, the delay remains unexplained. This Court is informed by learned Prosecutor on instructions that in the ground case charge sheet has been filed on 12.05.2023 (within the statutorily prescribed time) and the same has been taken on file as Spl.S.C.No.54 of 2023 by the Special Court for POCSO Act cases, Tiruvannamalai. Therefore, the accused will not be entitled to default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] in the ground case. This also means that the accused may move for regular bail under Section 439 Cr.P.C. If the accused moves for regular bail, we make it clear that the Special Court concern shall deal with the bail application on its own merits and in accordance with law untrammelled by this order which is made for the limited purpose of testing the impugned preventive detention order in a habeas drill.

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



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11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.05.2023 bearing reference D.O.No.46/2023-C2 made by the second respondent is set aside and the detenu Thiru.Prevenkumar, male, aged 23 years son of Thiru.Raman, 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/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

gpa

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



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To

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6. The Public Prosecutor
High Court, Madras.



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