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H.C.P.No.862 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

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

H.C.P.No.862 of 2023

Salma

.. Petitioner /
Wife of detenu

VS

The State represented by its

1.The Additional Chief Secretary to
Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai – 600 007

3. The Inspector of Police
G-2 Police Station
Periyamedu, Chennai

4.The Superintendent
Central Prison
Puzhal, Chennai – 600 066

.. Respondents



H.C.P.No.862 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention dated 28.12.2022 passed by the 2nd respondent in BCDFGISSSV No.488/Goonda/Chennai City/2022 and quash the same and produce the detenu Asharaf Ali, Son of Dusthageer, aged about 28 years before this Court and set him at liberty and the detenu is now confined at Central Prison – II, Puzhal.

For Petitioner : Mr.J.Allwyn Selva Glad
for Mr.D.Mario Johnson

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 28.12.2022 bearing reference BCDFGISSSV No.488/2022' [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.



H.C.P.No.862 of 2023

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 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 ground case. The solitary case which is sole substratum of the impugned preventive detention order is Crime No.301 of 2022 on the file of G-2 Periyamedu Police Station for alleged offences under Sections 147, 148, 341 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.J.Allwyn Selva Glad, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P.No.862 of 2023

5. When the matter was taken up this Court was informed that co-accused was also clamped with a preventive detention order akin to the impugned preventive detention order, the same was assailed by the co-accused vide H.C.P.No.234 of 2023 and it was allowed on 28.06.2023. This order is as follows:



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

On

THE HONOURABLE MR JUSTICE MSUNDAR
and
THE HONOURABLE MR JUSTICE RSARATHIYAL

H.C.P.No.234 of 2023

Shamila G. Mathumathi

Prisoners
While in detention

vs

1. The Additional Chief Secretary to
Government of Tamil Nadu
Home, Prison and Justice Department,
Secretariat, Chennai - 600 009

2. The Commissioner of Police,
Greater Chennai Police
Office of the Commissioner of Police
Nagery, Chennai - 600 007

3. The Superintendent
Central Prison
Puducherry, Chennai - 605 008

4. The Inspector of Police
G-2, Periyasalai Police Station
Periyasalai, Chennai - 600 022

Respondents

Put on bail under Article 226 of the Constitution of India paying
for the amount of a writ of habeas corpus calling for the entire records

Shamila G. Mathumathi



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H.C.P.No.862 of 2023



H.C.P.No.234 of 2024

connected with the detention order passed by the second respondent in Memo No.489/BCDFGISSSV/2023 dated 28.12.2022 and quash the same as illegal and direct the respondents to produce the body or person of my husband namely Mr.Kishorekumar @ Kava Kishorekumar, male, aged 30 years, son of Mr.Aakaasam, residing at No.10/10, Kuravankulam 3rd street, Choolai, Chennai 12, now confined at Central Prison Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.N.Kannan
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 wife of detenu assailing a 'preventive detention order dated 28.12.2022 bearing reference BCDFGISSSV No.489/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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H.C.P.No.862 of 2023



H.C.P.No.234 of 2024

2. When the captioned HCP was listed for admission before

this Court, proceedings/orders dated 15.02.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 07.02.2023 inter alia assailing a detention order dated 28.12.2022 bearing reference BCDFGISSSV No.489/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority;

2. Wife of the detenu is the petitioner.

3. Mr.N.Kannan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter yesterday. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 341 and 302 of IPC in Crime No.301 of 2022 on the file of G-2, Periyamedu Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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



H.C.P.No.862 of 2023

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H.C.P.No.862 of 2023

convenience and clarity].

5. The detention order has been annulled inter alia on the ground that there is a delay in considering the representation of the petitioner.

6. Prison fee is made out for admission. Admin. Issue Rule nisi returnable by four weeks.

7. At R.Manjuppani, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.

4. There is no adverse case. The solitary case which is the sole substratum of the unpugned preventive detention order is Crime No.301 of 2022 on the file of G2, Periyamedu Police Station for alleged offences under Section 147, 148, 341 and 302 of The Indian Penal Code (15 of 1860) [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the unpugned detention order, it is not



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H.C.P.No.862 of 2023



H.C.P.No.234 of 2023

necessary to delve into the factual matrix or be detained further by facts

5. Mr.N.Kannan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. 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 04.12.2022 but the impugned detention order has been made only on 28.12.2022.

7. 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.

8. 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

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H.C.P.No.862 of 2023

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H.C.P.No.234 of 2023



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.

9. 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



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H.C.P.No.862 of 2023



H.C.P.No.234 of 2023

2023:MHC:1159 and a series of other orders in HCP cases.

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 28.12.2022 bearing reference BCDFGISSSV No.489/2022 made by the second respondent is set aside and the detenu Thiru.Kishorekumar @ Kava Kishorekumar, aged 30 years, son of Thiru.Aakaasam, 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

Neutral Citation : Yes

gpa

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



H.C.P.No.862 of 2023

6. This Court was further informed that the same point on which this Court interfered with the impugned preventive detention order in the case of co-accused is available in the case on hand also. Therefore, following the aforementioned order in H.C.P.No.234 of 2023, captioned HCP is also allowed.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.12.2022 bearing reference No.488/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru. Asharaf Ali, aged 28 years, Son of Thiru. Dusthageer, 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.)
31.07.2023

Index : Yes

Neutral Citation : Yes/
gpa

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



H.C.P.No.862 of 2023

To

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1. The Additional Chief Secretary to
Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George, Chennai – 600 009.
2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
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4. The Superintendent
Central Prison
Puzhal, Chennai – 600 066
5. The Public Prosecutor,
High Court, Madras.



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H.C.P.No.862 of 2023

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

gpa

H.C.P.No.862 of 2023

31.07.2023