



H.C.P.No.914 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.914 of 2023

Anisha

..

Petitioner /
Wife of detenu

Vs.

1. State represented by
Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Erode District
Erode
3. The Superintendent of Police
Erode District
Erode
4. The Superintendent of Prison
Central Prison-Coimbatore
Coimbatore District

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5. The Inspector of Police
Erode South Police Station
Erode District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's husband detention order under Tamil Nadu Act 14 of 1982 vide detention order dated 18.08.2022 on the file of the 2nd respondent made in his proceedings in Cr.M.P.No.22/Sexual Offender/2022-C1 and quash the same as illegal and consequently direct the respondents to produce the petitioner's husband namely Syed Ali, son of Kasim Sait, aged 40 years before this Court and set him at liberty from detention now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.J.Jayan

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 18.08.2022 bearing reference Cr.M.P.No.22/Sexual Offender/2022-C1' [hereinafter 'impugned preventive detention order' for the sake of

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convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

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

3. There is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.279 of 2022 on the file of Erode South Police Station for alleged offences under Sections 5(l), 5(m), 5(n) read with Section 6, 16 and 17 of Protection of Child from Sexual Offences Act, 2012 and Sections 468, 471 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Sections 34 and 35 of Aadhaar (Targetted Delivery of Financial and Other Subsidies Benefits and Services) Act, 2016. Owing to the nature of the challenge to the impugned



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detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.J.Jayan, 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 petitioner was arrested on 02.06.2022 but the impugned detention order has been made only on 18.08.2022.

6. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.



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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 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**



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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. Be that as it may, we are informed by the learned Prosecutor that charge sheet /final report has been filed within the prescribed time in the trial Court. If the detenu moves for regular bail in the trial Court, we make it clear that the same will be heard on its own merits and in accordance with law untrammelled by this order, which has been made for the limited purpose of Habeas Corpus legal 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 detention order dated 18.08.2022 bearing reference Cr.M.P.No.22/Sexual Offender/2022 C1 made by the second respondent is set aside and the detenu Thiru.Syed Ali, aged 40 years, son of Thiru.Kasim Sait 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.)

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Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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Madras High Court, Chennai



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R.SAKTHIVEL, J.,

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