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H.C.P.No.936 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.936 of 2023

A.Ashok Kumar
S/o.Arun Kumar

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009
2. The District Magistrate and District Collector
Thiruvallur District
3. The Superintendent of Police
Thiruvallur District
4. The Superintendent of Prison
Central Prison, Puzhal II, Chennai
5. The Inspector of Police
Sipcot Police Station, Chennai District

..Respondents



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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 14.01.2023 in B.C.D.F.G.I.S.S.S.V No.2/2023 against the petitioner's cousin Viji@ Kellis, son of Amavasai, aged about 20 years, who is confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.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 cousin of the detenu assailing a 'preventive detention order dated 14.01.2023 bearing reference B.C.D.F.G.I.S.S.S.V No.2/2023' [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 the second respondent.

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2. Impugned preventive detention order has been made under 'The

WEB COM 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 are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.188 of 2022 on the file of Sipcot Police Station was registered under Section 174(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] (Suspicious Death) and subsequently altered into Section 302 and 201 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.



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4. Mr.T.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 17.10.2022 but the impugned preventive detention order has been made only on 14.01.2023.

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



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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 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



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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. Besides ground case, two adverse cases have been referred to in the grounds of impugned preventive detention order. One adverse case is Crime No.228 of 2022 on the file of Kavarapetti Police Station (occurrence was on 05.09.2022) and other is Crime No.164 of 2022 on the file of Gummidipoondi Police Station (occurrence was on 20.09.2022) and therefore, the delay remains unexplained.

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.01.2023 bearing reference B.C.D.F.G.I.S.S.S.V No.2/2023 made by the second respondent is set aside and the detenu Thiru.Viji @ Kellis, aged 20 years, son of Thiru.Amavasai is



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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.)

08.08.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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

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To

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