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H.C.P.No.951 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

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

H.C.P.NO.951 OF 2023

Abdul Kather

.. Petitioner

VS.

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.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.State Rep. By its
The Inspector of Police
Chithode Police Station
Erode District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 14.04.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.02/Goonda/2023/C1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Mujeebrahman S/o. Abdulrahman, aged 44 years before this Court and set the petitioner's brother at liberty from detention, now the petitioner's brother detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] came up for admission on 06.06.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR, J]

Captioned Habeas Corpus Petition has been filed in this Court on 01.06.2023 *inter alia* assailing a detention order dated 14.04.2023 bearing reference Cr.M.P.No.02/Goondu/2023 C1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, brother of the detenu is the petitioner.

3. Mr.W.Carmyles Gandhi, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 399 of 'Indian Penal Code, 1860 (Act 45 of 1860)' [IPC for brevity] and subsequently altered into Sections 399, 420, 465, 468 and 471 of IPC in Crime No.39 of 2023 on the file of Chithode Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goondu' under Section 2(i) of 'The Tamil Nadu



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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].

5. The detention order has been assailed *inter alia* on the ground that live and proximate link between the grounds of detention and purpose of detention has snapped as the detainee was arrested on 28.01.2023 but the impugned detention order has been passed on 14.04.2023.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

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


[M.S., J]


[K.G.T., J]

06.06.2023

mk



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2.The aforementioned order made in the 06.06.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3.There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.39 of 2023 on the file of Chithode Police Station for alleged offence under Section 399 of IPC and subsequently altered into Sections 399, 420, 465, 468 and 471 of IPC. 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.W.Camyles Gandhi, learned counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for all respondents are before us.

5.Learned counsel for petitioner submits that 'live and proximate



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link' between the grounds of detention and purpose of detention has snapped as date of arrest and remand in the ground case is 28.01.2023 but the impugned detention order has been made only on 14.04.2023.

6.Mr.A.Gokulakrishnan, 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



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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 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 adverse case is in Crime No.33 of 2023 on the file of Chithode Police Station, Erode, (occurrence was on 20.01.2023) and



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and therefore time consumed remains unexplained.

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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 14.04.2023 bearing reference Cr.M.P.No.02/Goonda/2023C1 made by the second respondent is set aside and the detenu Thiru. Mujeebrahman, aged 44 years, son of Thiru. Abdulrahman 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

Neutral Citation : Yes

Speaking

TK

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



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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
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AND
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