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H.C.P.No.967 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.967 of 2023

Selvi

W/o.Ayyasamy

.. Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Detaining Authority
Coimbatore City
Coimbatore.
3. The Additional Superintendent
Central Prison
Coimbatore.
4. The Inspector of Police cum
Sponsoring Authority
All Women Police Station - Central
Coimbatore City, Coimbatore.

..Respondents



H.C.P.No.967 of 2023

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 produce the body of the petitioner's son namely A.Sudhakar, aged about 24 years, who is detained in 3rd Respondent / The Additional Superintendent, Central Prison, Coimbatore before this Honble Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 22.08.2022 made in C.No.52/G/IS/2022, on the file of the 2nd Respondent herein and quash the same.

For Petitioner : Mr.B.Gopalakrishnan
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] was listed in the Admission Board on 08.06.2023, this Court made the following order:

'H.C.P.No.967 of 2023

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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



H.C.P.No.967 of 2023

Captioned Habeas Corpus Petition has been filed in this Court on 01.06.2023 inter alia assailing a detention order dated 22.08.2022 bearing reference C.No.52/G/IS/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. To be noted, mother of the detenu is the petitioner.

3. Mr.B.Kumarasamy, 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 Sections 363 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Section 3(a) read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 in Crime No.16 of 2022 on the file of All Women Police Station (Central), Coimbatore City.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 convenience and clarity].

5. The detention order has been assailed inter alia on the ground that there is a delay of 40 days in passing the impugned



preventive detention order as the detenu was arrested on 13.07.2022 but the impugned preventive detention order has been passed on 22.08.2022.

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.'

2. The aforementioned Admission Board order captures the essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.B.Gopalakrishnan, learned counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for all respondents are before us.

4. Elaborating on paragraph No.5 of the Admission Board order,



H.C.P.No.967 of 2023

learned counsel submitted that the detenu was arrested on 13.07.2022 but the impugned preventive detention order has been made only on 22.08.2022 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

5. Mr.A.Gokulakrishnan, 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.

6. 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 a proposal by a Sponsoring Authority and after noticing the trajectory the matter took, Hon'ble Supreme Court held



H.C.P.No.967 of 2023

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.

7. 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.



H.C.P.No.967 of 2023

WEB COPY

8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.16 of 2022 on the file of All Women Police Station (Central), Coimbatore City for alleged offences under Sections 363 and 506(ii) of IPC and Section 3(a) read with Section 4 of POCSO Act.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.08.2022 bearing reference C.No.52/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.A.Sudhakar, aged 24 years, son of Thiru.Ayyasamy, 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.)

10.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

Page Nos.7/10



H.C.P.No.967 of 2023

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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Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Detaining Authority
Coimbatore City
Coimbatore.
3. The Additional Superintendent
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5. The Public Prosecutor
High Court, Madras.



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H.C.P.No.967 of 2023

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R.SAKTHIVEL, J.,

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H.C.P.No.967 of 2023

10.08.2023

Page Nos.9/10



WEB COPY



H.C.P.No.967 of 2023