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H.C.P.No.968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.968 of 2023

Bhuvaneswari
W/o.Arumugam

.. Petitioner/Mother of detenu

VS

State Rep by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison,
Salem.

4.The Inspector of Police,
Kitchipalayam Police Station,
Salem City.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus to call for the records in



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C.M.P.No.37/Goonda/Salem City/2023 dated 15.05.2023 on the file of the Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu, Duraisamy @ Monnaiyan, S/o.Arumugam, aged about 22 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Ms.S.Sengkodi

For Respondents : Mr.E.Raj Thilak
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 09.06.2023, the following order was made:

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M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 02.06.2023 inter alia assailing a detention order dated



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15.05.2023 bearing reference C.M.P.No.37/Goonda/Salem City/2023 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. Ms.S.Sengkodi, 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 147, 148, 341, 294(b) and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.91 of 2023 on the file of Kitchipalayam 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 convenience and clarity].

5. The detention order has been assailed inter alia on the ground that family members were not informed about the detention of the detenu.

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.'



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2. The aforementioned 09.06.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. To be noted, 'detention order dated 15.05.2023 bearing reference C.M.P.No.37/Goonda/Salem City/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. 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.92 of 2023 on the file of Kitchipalayam Police Station for alleged offences under Sections 341, 395, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience



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and clarity]. 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.

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

6. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated her challenge to the impugned preventive detention order on the point that family members were not informed about the detention of the detenu, however in the final hearing board today learned counsel submitted that the detenu was arrested on 03.04.2023 but the impugned preventive detention order has been made only on 15.05.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

7. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time



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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.

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 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.



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

10. Besides ground case, one adverse case has been referred to in the grounds of impugned preventive detention order. The adverse case is Crime No.91 of 2023 on the file of Kitchipalayam Police Station, Salem City (occurrence was on 02.04.2023) and therefore, the delay remains unexplained.

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



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12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.05.2023 bearing reference C.M.P.No.37/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Duraisamy @ Monnaiyan, S/o.Thiru.Arumugam, aged about 22 years, 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.)
29.09.2023

Index : Yes
Neutral Citation : Yes
Speaking order
rsi

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



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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent of Prison,
Central Prison,
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- 4.The Inspector of Police,
Kitchipalayam Police Station,
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- 5.The Public Prosecutor
High Court, Madras.



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

rsi

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