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H.C.P.No.975 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.975 of 2023

S.Priyadharshini
W/o.Muthiah

.. Petitioner/Wife of detenu

Vs.

1.State of Tamil Nadu,
Rep. by Secretary to Government Home,
Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Coimbatore District,
Coimbatore.

3.The Superintendent of Police,
Coimbatore District,
Coimbatore.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The Inspector of Police,
Vadavalli Police Station,
Coimbatore.

.. Respondents



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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 detention of the petitioner's husband who was branded as GOONDA by the order of detention passed by the 2nd respondent order memo Cr.M.P.No.18/G/2023/E1 dated 18.05.2023 who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu or his body before this Court and set him at liberty.

For Petitioner : Mr.K.Rajendra Prasad

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 12.06.2023, this Court made the following order:



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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 02.06.2023 *inter alia* assailing a detention order dated 18.05.2023 bearing reference C.M.P.No:18/G/2023/E1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

3. To be noted, wife of the detenu is the petitioner.

4. Mr.K.Rajendra Prasad, 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 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently, altered into Section 302 of IPC in Crime No.80 of 2023 on the file of Vadavalli Police Station.

5. 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,



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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].

6. The detention order has been assailed *inter alia* on the ground that some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

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

8. 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]
12.06.2023

mk



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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 in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this 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. To be noted, 'detention order dated 18.05.2023 bearing reference No.Cr.M.P.No.18/G/2023/E1 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.

3. Mr.K.Rajendra Prasad, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 6 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that some



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of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation, however in the final hearing board today learned counsel submitted that the detenu was arrested on 24.03.2023 but the impugned preventive detention order has been made only on 18.05.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

5. 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 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.

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 the proposal by the Sponsoring Authority



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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.

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.



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8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.80 of 2023 on the file of Vadavalli Police Station, Coimbatore District for an alleged offence *inter-alia* under Section 307 of I.P.C. and subsequently altered into Section 302 of I.P.C.

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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.05.2023 bearing reference Cr.M.P.No.18/G/2023/E1 made by the second respondent is set aside and the detenu Thiru.Muthaiya, aged 33 years, son of Thiru.Vanumamalai, 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.)
11.09.2023

Index : Yes

Speaking order

Neutral Citation : Yes

rsi

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,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Coimbatore District,
Coimbatore.
- 3.The Superintendent of Police,
Coimbatore District,
Coimbatore.
- 4.The Superintendent,
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- 5.The Inspector of Police,
Vadavalli Police Station,
Coimbatore.
- 6.The Public Prosecutor
Madras High Court, Chennai



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

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