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H.C.P.No.988 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

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

H.C.P.No.988 of 2023

Kalaiaarasi

.. Petitioner/
Wife of the detenu

VS

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

2.The District Collector and District Magistrate of
Vellore District, Vellore

3.The Superintendent of Police,
Vellore

4.The Superintendent
Central Prison, Vellore

5.The Inspector of Police,
Katpadi Police Station,
Vellore District.

.. 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 relating to the detention order passed by the second respondent pertaining to the order made in C3/D.O./005/2023 dated 30.01.2023 in detaining the



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detenu under 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu Suriya, son of Subramani, aged 25 years, who is detained at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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 13.06.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 05.06.2023 inter alia assailing a detention order dated 30.01.2023 bearing reference C3/D.O.No.005/2023 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, Wife of the detenu is the petitioner.

3. Mr.G.Nirmal Krishnan, 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 'man missing', subsequently, altered into Sections 302, 201 read with 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and again altered into Sections 147, 148, 294(b), 302 and 201 read with 34 of IPC in Crime No.419 of 2022 on the file of



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Katpadi 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 some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

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

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

2. The aforementioned order made in the 13.06.2023 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 no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.419



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of 2022 on the file of Kadpadi Police Station was originally registered for 'man missing', subsequently, altered into Sections 302, 201 read with 34 of IPC and again altered into Sections 147, 148, 294(b), 302 and 201 read with 34 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.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time admission i.e., in the admission Board, the point that some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation was raised, however in the final hearing learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 15.12.2022 but the impugned detention order has been made only on 30.01.2023.

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



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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 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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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 sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.419 of 2022 on the file of Katpadi Police Station which was initially registered *inter-alia* for 'man missing', subsequently, altered into Sections 302, 201 read with Section 34 of IPC and again altered into Sections 147, 148, 294(b), 302 and 201 read with 34 of IPC.

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



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.01.2023 bearing reference C3/D.O.No.005/2023 made by the second respondent is set aside and the detenu Thiru.Suriya, aged 25 years, son of Thiru.Subramani, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
gpa

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



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To

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Vellore District, Vellore
3. The Superintendent of Police,
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Katpadi Police Station,
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6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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