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H.C.P.No.1033 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

H.C.P.No.1033 of 2023

S.Ammu

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
PEW St.Thomas Mount Police Station,
Chennai.

.. 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 2nd respondent pertaining to the order made in BCDFGISSSV No.137/2023 dated 27.04.2023 in detaining the detenu under Section 2(f) of Tamil Nadu Act 14 of 1982, as a Drug Offender, and quash the same and direct the respondents to produce the detenu Subramani, Son of Pakkiri,

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aged about 47 years, who is detained at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 20.06.2023, the following proceedings/order was made:

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

(Order of the Court was made by **M.SUNDAR, J.,**)

Captioned Habeas Corpus Petition has been filed in this Court on 12.06.2023 inter alia assailing a detention order dated 27.04.2023 bearing reference BCDFGISSSV No.137/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



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2. To be noted, daughter of detenu is the petitioner.
3. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) read with 20(b)(ii)(B) and 25 of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.77 of 2023 on the file of Prohibition Enforcement Wing, St.Thomas Mount.
4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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.'

3. The aforementioned proceedings/order dated 20.06.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 20.06.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short



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references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Before we proceed further, we make it clear that 'detention order dated 27.04.2023 bearing reference BCDFGISSSV No.137/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.

5. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all the respondents are before us.

6. As would be evident from paragraph 5 of the Admission Board order, learned counsel for the petitioner has predicated his campaign against the impugned preventive detention order on the point that some of the pages in the grounds booklet furnished to the detenu are illegible, however, today in the Final Hearing Board, learned counsel for petitioner submits that 'live and proximate link'



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between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 17.03.2023 but the impugned preventive detention order has been made only on 27.04.2023.

7. 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.

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



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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.

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. The first adverse case cited in the grounds of impugned



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preventive detention order pertains to the year 2020 (date of occurrence 20.11.2020) and the second adverse case pertains to the year 2021 (date of occurrence 17.11.2021) and therefore time consumed remains unexplained.

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.04.2023 bearing reference BCDFGISSSV No.137/2023 made by the second respondent is set aside and the detenu Thiru.Subramani, aged 47 years, son of Thiru.Pakkiri, 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.)
27.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai – 600 066.

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To

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