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H.C.P.No.1062 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

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

H.C.P.NO.1062 OF 2023

Mrs.Chippi Mol VK

.. Petitioner

VS.

1.The Government of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The District Magistrate / District Collector
Erode District.

3.The Superintendent of Police
Erode District.

4.The Superintendent of Central Prison
Coimbatore.

5.The Inspector of Police
Chithode Police Station
Erode District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for entire records, related to the petitioner's brother Mr.Sreekanth, aged 32 years, son of Late Krishnankutti's detention in proceedings Cr.M.P.No.03/Goonda/2023C1, dated 14.04.2023 on the file of the second respondent under Tamil Nadu Act 14 of 1982 and to quash the same as illegal and unconstitutional and direct the respondents to produce the detenu Mr.Sreekanth aged 32 years son of Late Krishna Kutti, presently detained in the Central Prison, Coimbatore this Court set him at liberty from detention.

For Petitioner : Mr.Prashant Rajagopal

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by sister of the detenu assailing a 'preventive detention order dated 14.04.2023 bearing reference Cr.M.P.No.03/Goonda/2023C1' [hereinafter 'impugned preventive detention order' for the sake of



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convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2.Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.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.39 of 2023 on the file of Chithode Police Station for alleged offence registered under Section 399 of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 399, 420, 465, 468 and 471 of IPC. Owing to the nature



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

5.Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest and remand in the ground case is 28.01.2023 but the impugned detention order has been made only on 14.04.2023.

6.Mr.A.Gokulakrishnan, 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.



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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.

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*,



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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 adverse case is in Crime No.33 of 2023 on the file of Chithode Police Station, Erode, (occurrence was on 20.01.2023) and and therefore time consumed remains unexplained.

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

11.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.04.2023 bearing reference Cr.M.P.No.03/Goonda/2023C1 made by the second respondent is set aside



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and the detenu Thiru. Sreekanth, aged 32 years, son of (Late) Krishnankutti 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.]

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Index : Yes

Neutral Citation : Yes

Speaking

TK

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, Fort St. George,
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- 2.The District Magistrate / District Collector
Erode District.
- 3.The Superintendent of Police
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- 5.The Inspector of Police
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Erode District.
- 6.The Public Prosecutor
High Court
Madras.



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AND
R.SAKTHIVEL, J.

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