



H.C.P.No.1086 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1086 of 2023

Visalatchi
W/o.Sekar

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St.George, Secretariat
Chennai-600 009.
2. The District Collector and District Magistrate
Vellore District.
3. The Superintendent of Police
Vellore District
Vellore.
4. The Superintendent of Prison
Central Prison
Vellore, Vellore District.
5. The Sub Inspector of Police
Melpatti Police Station
Vellore District.

..Respondents

Page Nos.1/8



H.C.P.No.1086 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for the records in connection with the order of detention passed by the second respondent dated 15.3.2023 in his office Ref.C3.D.O.No.18/2023 against the petitioners son by name Thiru.Jaisankar, S/o.Sekar, aged about 42 years, now confined at Central Prison, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Honble Court and set him at liberty .

For Petitioner : Mr.E.Kannadasan
For Respondents : Mr.A.Gokulakrishnan
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 26.06.2023, this Court made the following order:

'H.C.P.No.1086 of 2023

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



H.C.P.No.1086 of 2023

Court on 19.06.2023 inter alia assailing a detention order dated 15.03.2023 bearing reference C3/D.O.No.18/2023 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, mother of the detenu is the petitioner.

3. Mr.E.Kannadasan, 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 341, 302 and 201 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] and subsequently, altered into Sections 341, 294(b) and 302 of IPC in Crime No.18 of 2023 on the file of Melpatti 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.



H.C.P.No.1086 of 2023

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 Admission Board order captures the essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

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

4. At the time of admission i.e., in the Admission Board, the point that the some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation was urged but in the final hearing Board today, learned counsel for



H.C.P.No.1086 of 2023

petitioner predicated his campaign against the impugned preventive detention order on one point and that one point is 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 24.01.2023 but the impugned preventive detention order has been made only on 15.03.2023.

5. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned 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 a proposal by a Sponsoring Authority



H.C.P.No.1086 of 2023

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 the 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.



H.C.P.No.1086 of 2023

8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.18 of 2023 on the file of Melpatti Police Station for alleged offences under Sections 341, 302 and 201 of IPC and subsequently, altered into Sections 341, 294(b) and 302 of IPC.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.03.2023 bearing reference C3/D.O.No.18/2023 made by the second respondent is set aside and the detenu Thiru.Jaisankar, male, aged 42 years, son of Thiru.Sekar, 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.)

10.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

Page Nos.7/8



WEB COPY



H.C.P.No.1086 of 2023

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

mk

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St.George, Secretariat
Chennai-600 009.
2. The District Collector and District Magistrate
Vellore District.
3. The Superintendent of Police
Vellore District, Vellore.
4. The Superintendent of Prison
Central Prison
Vellore, Vellore District.
5. The Sub Inspector of Police
Melpatti Police Station
Vellore District.
6. The Public Prosecutor
High Court, Madras.

H.C.P.No.1086 of 2023

10.08.2023