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H.C.P.No.1219 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.1219 of 2023

V.Latha

.. Petitioner

Vs

- 1.State Rep. By its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Vepery,
Chennai – 07.
- 3.The Additional Superintendent of Police,
Central Prison II, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
S7 Madipakkam Police Station,
Chennai – 91.

.. 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 pertaining to the order of detention dated 27.04.2023 passed by the 2nd respondent herein vide his proceedings BCDFGISSSV No.133/2023 as confirmed by the 1st respondent and quash the same and produce

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the detenu V.Monish @ Monish Kumar, S/o.Vadivel, male, aged 23 years, detained in Central Prison - 2 Puzhal, Chennai - 66 before this Court and set him at liberty.

For Petitioner : Mr.A.Udhayachandiran
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 13.07.2023, the following proceedings/order was made:

'H.C.P.No.1219 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 Court on 21.06.2023 inter alia assailing a 'detention order dated 27.04.2023 bearing reference BCDFGISSSV No.133/2023' [hereinafter 'impugned preventive detention order' for the sake



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of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of detenu is the petitioner.

3. Mr.K.V.Shanmuganathan, 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 294(b), 341, 397, 336 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.118 of 2023 on the file of S-7 Madipakkam Police Station.

4. The aforementioned impugned preventive 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 impugned preventive detention order has been assailed inter alia on the ground that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is vitiated in law as the detenu has not filed any bail application.

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 13.07.2023

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 13.07.2023 shall now be read as an integral part and parcel of the



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instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Mr.A.Udhayachandiran, 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.

5. 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 subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is vitiated in law as the detenu has not filed any bail application, however, today in the Final Hearing Board, 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 in the ground case is 03.04.2023 but the impugned preventive detention order has been made only on 27.04.2023.



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6. 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.

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



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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, 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. Two adverse cases cited in the grounds of impugned preventive detention order pertain to the same year i.e., 2022 (date of occurrence 21.08.2022 and 22.08.2022 respectively) and therefore time consumed remains unexplained.



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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 preventive detention order dated 27.04.2023 bearing reference BCDFGISSSV No.133/2023 made by the second respondent is set aside and the detenu Thiru.Monish @ Monishkumar, aged 23 years, son of Thiru.Vadivel, 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
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai – 66.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Vepery,
Chennai – 07.

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3.The Additional Superintendent of Police,
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4.The Inspector of Police,
S7 Madipakkam Police Station, Chennai – 91.

5.The Public Prosecutor,
High Court, Madras.



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R.SAKTHIVEL, J.,**

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