



H.C.P.No.1163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

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

H.C.P.NO.1163 OF 2023

Venugopal

.. Petitioner

Vs.

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

2.The District Magistrate and District Collector
Office of the District Collector
Namakkal District.

3.The Superintendent of Police
Office of the Superintendent of Police
Namakkal District.

4.The Superintendent of Prison
Central Prison, Salem.

5.The Inspector of Police
Tiruchengode Town Police Station
Namakkal District.

.. Respondents

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PRAYER: 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 detention order in No.CMP No.01/GOONDA/2023[M1] dated 13.03.2023 on the file of the second respondent and set aside the same and direct the respondents herein to produce the body of the petitioner / detenu Venugopal S/o.Sundaram aged 56 years now confined in Central Prison at Salem before this Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
Assisted by Mr.C.Aravind

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] came up for admission on 06.07.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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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 22.06.2023 *inter alia* assailing a 'detention order dated 13.03.2023 bearing reference CMP No.01/Goonda/2023 (M1)' (hereinafter 'impugned preventive detention order' for the sake of convenience and clarity) 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, detenu is the petitioner.

3. Ms.R.Subadra Devi, 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 offence under Section 379 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.59 of 2023 on the file of Tiruchengode Town Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section



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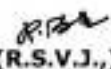
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2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil 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 grounds that 'live and proximate link' between the grounds of detention and purpose of detention has snapped and translated copies of bail orders relied on by the Detaining Authority have not been furnished to the detenu.

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.


(M.S.J.,)

(R.S.V.J.,)
06.07.2023

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2.The aforementioned order made in the 06.07.2023 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 are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.59 of 2023 on the file of Tiruchengode Town Police Station for alleged offence under Section 379 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.Ms.R.Subadra Devi, learned counsel representing the counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all respondents are before us.



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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 12.02.2023 but the impugned detention order has been made only on 13.03.2023.

6.Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel 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



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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**, **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.



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9.To be noted, out of the four adverse cases, the first adverse case viz., Crime No.380 of 2022 on the file of Namakkal District, Tiruchengode Town Police Station for alleged offence *inter-alia* under Section 379 of IPC; second adverse case viz., Crime No.308 of 2022 on the file of Cuddalore District, Mandharakuppam Police Station for alleged offence *inter-alia* under Section 379 of IPC; third adverse case viz., Crime No.290 of 2022 on the file of Cuddalore District, Oomangalam Police Station for alleged offence *inter-alia* under Section 379 of IPC are of the year 2022 and fourth adverse case viz., Crime No.1446 of 2020 on the file of Namakkal District Rasipuram Police Station for alleged offence *inter-alia* under Section 379 of IPC altered into 114, 411, 120(b), 379 and 75 of IPC, is of the year 2020, 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 13.03.2023 bearing reference C.M.P.No.01/GOONDA/2023[M1] made by the second respondent is set



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aside and the detenu Thiru. Venugopal, aged 56 years, son of Thiru.

Sundaram 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.]

03.08.2023

Index : Yes

Neutral Citation : Yes

TK

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

To

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The District Magistrate and District Collector
Office of the District Collector, Namakkal District.
- 3.The Superintendent of Police
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- 5.The Inspector of Police
Tiruchengode Town Police Station, Namakkal District.
- 6.The Public Prosecutor
High Court, Madras.

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R.SAKTHIVEL, J.

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