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H.C.P.No.1176 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1176 of 2023

Aandiyappan

.. Petitioner

Vs.

1. State by
The Secretary
Prohibition and Excise Department
St.George Fort, Chennai-9.
2. The District Collector and District Magistrate
Ranipet District
Ranipet
3. The Superintendent of Police
Ranipet District
Ranipet
4. The Sub-Inspector
Arakkonam Taluk Police Station
Ranipet District
5. The Superintendent
Central Prison, Vellore

..Respondents

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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, to call for the records in connection with the order of detention passed by the second respondent in B3/D.O.No.03/2023 dated 12.01.2023 against the petitioner's son Ajith, aged 20 years, detenu who is confined in the Central Prison, Vellore and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.C.Chokkalingam
For Respondents : Mr.E.Raj Thilak
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 17.07.2023, this Court made the following order:

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

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



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Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.07.2023.

2. Adverting to earlier proceedings dated 07.07.2023, learned counsel submits that instead of predicating his argument on not passing muster qua public order, he would now predicate his argument on the point that live and proximate link between the grounds of detention and purpose of detention has snapped as according to learned counsel, the date of arrest is 08.12.2022 whereas the impugned detention order has been made on 12.01.2023. 3. Captioned Habeas Corpus Petition has been filed in this Court on 28.06.2023 inter alia assailing a 'detention order dated 12.01.2023 bearing reference B3/D.O.No.03/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of clarity]. To be noted, fourth respondent is the Sponsoring Authority.

4. To be noted, father of the detenu is the petitioner.

5. Mr.C.Chokkalingam, 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 offences under Sections 294(b) and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.375 of 2022 on the file of Arakkonam Taluk Police Station.

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



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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].

7. The impugned preventive detention order has been assailed inter alia on the ground that live and proximate link between the grounds of detention and purpose of detention has snapped as the date of arrest is 08.12.2022 whereas the impugned detention order has been made on 12.01.2023.

8. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

9. 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.



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3. Mr.C.Chokkalingam, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. Elaborating on paragraph No.7 of the Admission Board order, learned counsel submitted that the detenu was arrested on 08.12.2022 but the impugned preventive detention order has been made only on 12.01.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

5. 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 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.



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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 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*



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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.

8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.375 of 2022 on the file of Arakkonam Taluk Police Station for alleged offences under Sections 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 12.01.2023 bearing reference B3/D.O.No.03/2023 made by the second respondent is set aside and the



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detenu Thiru.Ajith, male, aged 20 years, son of Thiru.Andiyappan, 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.)

08.08.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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