



H.C.P.No.1192 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

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

H.C.P.No.1192 of 2023

R.Sabarish
S/o.Radha Krishnan

.. Petitioner /
Brother-in-law of the detenu

Vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Dept.,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate
Office of the District Collector
Coimbatore District.
3. The Superintendent of Police
Office of the Superintendent of Police
Coimbatore Rural.
4. The Superintendent of Prison
Central Prison at Coimbatore
Coimbatore-18.
5. The Inspector of Police
Vadavalli Police Station
Coimbatore District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in detention order in No.Cr.M.P.No.16/G/2023/E1 dated 04.05.2023 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the detenu Madhanraj, son of Krishnan, aged 33 years, now confined in Central Prison at Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner	:	Ms.R.Subadra Devi
For Respondents	:	Mr.E.Raj Thilak
		Additional Public Prosecutor
		Assisted by
		Mr.Aravind.C

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 10.07.2023, the following order was made:

'H.C.P.NO.1192 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



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this Court on 03.07.2023 inter alia assailing a 'detention order dated 04.05.2023 bearing reference Cr.M.P.No.16/G/2023/E1' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, brother in law of the detenu is the petitioner.

3. Ms.R.Subadra Devi, 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 302 @ 302 and 201 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.76 of 2023 on the file of Vadavalli Police Station, Coimbatore District.

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



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clarity].

5. *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 and that the detenu has no previous cases of similar nature.*

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 all 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. Ms.R.Subadra Devi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the



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respondents are before us.

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4. Elaborating on paragraph No.5 of the Admission Board order, learned counsel submitted that the detenu was arrested on 21.03.2023 but the impugned preventive detention order has been made only on 04.05.2023 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.

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



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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.

8. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.76 of 2023 on the file of



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Vadavalli Police Station, Coimbatore District for alleged offence under

Section 302 of IPC and subsequently altered into Sections 302 and 201 of IPC.

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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.05.2023 bearing reference Cr.M.P.No.16/G/2023/E1 made by the second respondent is set aside and the detenu Thiru.Madhanraj, male, aged 33 years, son of Thiru.Krishnan, 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.)

21.09.2023

Index : Yes

Speaking order

Neutral Citation : Yes/No

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

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

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To

1. The Additional Chief Secretary to Government
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6. The Public Prosecutor,
High Court, Madras.

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