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H.C.P.No.1256 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.1256 OF 2023

S.Palkani

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. By Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009.
- 2.The District Magistrate and District Collector
Coimbatore District, Coimbatore.
- 3.The Superintendent of Police
Coimbatore District, Coimbatore.
- 4.The Superintendent of Prison
Central Prison
Coimbatore.
- 5.The Inspector of Police
Periyanaickenpalayam Police Station
Coimbatore.

.. Respondents



H.C.P.No.1256 of 2023

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 entire records from the second respondent in connection with order in CrI.M.P.No.11/G/2023/E1 dated 09.02.2023 and quash the same and produce the petitioner's son namely Siva S/o. Suresh, aged 27 years now confined in Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Ms.S.Nadhiya

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 17.07.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.
and
R.SAKTHYTHY, J.

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

Captioned Habeas Corpus Petition has been filed in this Court on 05.07.2023 *inter alia* assailing a 'detention order dated 09.02.2021 bearing Reference : C.A.M.P.No.U/G/3033/F' [hereinafter 'impugned preventive detention order for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority for the sake of clarity']. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Ms.S.Nadhiya, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground arose that the detainee is for alleged offence under Section 392 of Indian Penal Code, 1860 (Act 45 of 1860) [IPC] for the sake of brevity] in Cause No 902 of 2023 on the file of Pottayankuppaslayam Police Station, Coimbatore District.

4. The aforementioned impugned preventive detention order has been made on the premise that the detainee is a 'Gooda' under Section 3(f) of 'The

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17.07.2023

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug offenders, Forest offenders, Goondas, Immoral Traffic offenders, Sand offenders, Sexual-offenders, -Snatch-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [Hereinafter 'Act' of 1982] for the sake of convenience and clarity.

3. The impugned preventive detention order has been assailed inter alia on the ground that live and personal link between the grounds of detention and purpose of detention has snapped as the detainee was remanded to judicial custody on 23.12.2022 but the impugned preventive detention order has been passed on 09.02.2023.

4. *Prima facie* case made out for admission. Admit. Issue Rule not returnable by four weeks.

5. Mr.E.Ra. Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. He is the captioned Habeas Corpus Petitioner accordingly.


[M.S.J.]

[R.S.V.I.]
17.07.2023

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2.The aforementioned order made in the 17.07.2023 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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.902 of 2022 on the file of Periyanaickenpalayam Police Station for alleged offence under Section 392 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.S.Nadhiya, learned 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 23.12.2022 but the impugned detention order has been made only on 09.02.2023.

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, the adverse case viz.,. Crime No.44 of 2019 on the file of Thoothukudi District, Kulasekaranpattinam Police Station, for alleged offences under Sections 454 and 392 of IPC, is of the year 2019, the occurrence was on 21.02.2019 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 09.02.2023 bearing reference CrI.M.P.No.11/G/2023/E1 made by the second respondent is set aside and the detenu Thiru. Siva, aged 27 years, son of Thiru. Suresh 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.]

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Index : Yes/No

Neutral Citation : Yes/No

Speaking / Non-speaking order

TK

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

To

- 1.The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009.
- 2.The District Magistrate and District Collector
Coimbatore District, Coimbatore.
- 3.The Superintendent of Police
Coimbatore District, Coimbatore.
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- 5.The Inspector of Police
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- 6.The Public Prosecutor
High Court, Madras.



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