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H.C.P.No.1233 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.1233 of 2023**

Meena

.. Petitioner /  
mother of the detenu

Vs

1. The State of Tamil Nadu  
Represented by Secretary to Government,  
Prohibition and Excise Department  
Fort St.George  
Chennai-600 009.
2. The Commissioner of Police  
Avadi City  
Office of the Commissioner of Police  
(Goondas Section)  
Avadi, Chennai – 600 054
3. The Superintendent of Police  
Central Prison  
Puzhal
4. The Inspector of Police  
M-4, Redhills Police Station  
Chennai – 600 052

.. 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 relating to the detention order dated 04.05.2023 passed by the second respondent in B.C.D.F.G.I.S.S.S.V No.119 of 2023 and quash the same and direct the respondents herein to produce the petitioner's son Venkatesan, son of Nagaraj, aged 39 years, who is presently undergoing detention in the Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vetrivel

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 14.07.2023, the following order was made:

**' H.C.P.No.1233 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 06.07.2023 inter alia assailing a 'detention order dated 04.05.2023*



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bearing reference No.119/BCDFGISSSV/2023' (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, fourth respondent is the Sponsoring Authority.

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

3. Mr.M.Vetrivel, learned counsel on record for petitioner submits that ground case qua the detenu is for alleged offences under Sections 302 and 380 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.74 of 2023 on the file of M-4 Red Hills 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 grounds that arrest intimation pertaining to adverse case has not been enclosed in the grounds booklet served on the detenu and Tamil translation of death report has also not been given.

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

4. As would be evident from paragraph 5 of aforementioned Admission Board order, in the captioned HCP, at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the grounds that arrest intimation pertaining to adverse case has not been enclosed in the grounds booklet served on the detenu and Tamil translation of death report has also not been given but in



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the final hearing Board, learned counsel changed his line of attack qua his campaign against the impugned preventive detention order and submitted 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 19.02.2023 but the impugned preventive detention order has been made only on 04.05.2023.

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



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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 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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8. Besides ground case, one adverse case in Crime No.43 of 2021 on the file of M4 Redhills Police Station has been referred to in the grounds of impugned preventive detention order but the occurrence was on 01.02.2021 and therefore, the delay remains unexplained.

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 No.119/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Venkatesan, male, aged 39 years, son of Thiru.Nagaraj, 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

*gpa*

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

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To  
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1. The Secretary to Government,  
Prohibition and Excise Department  
Fort St.George  
Chennai-600 009.
2. The Commissioner of Police  
Avadi City  
Office of the Commissioner of Police  
(Goondas Section)  
Avadi, Chennai – 600 054
3. The Superintendent of Police  
Central Prison  
Puzhal
4. The Inspector of Police  
M-4, Redhills Police Station  
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5. The Public Prosecutor,  
High Court, Madras.



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*H.C.P.No.1233 of 2023*

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

*gpa*

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