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H.C.P.No.1400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.09.2023

CORAM

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

**H.C.P.No.1400 of 2023**

Lavanya

W/o.Suresh Babu @ Vellaikaran

.. Petitioner /  
Wife of the detenu

Vs

1. The State of Tamil Nadu  
Represented by the Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009
2. The Commissioner of Police / Detaining Authority  
Coimbatore City, Coimbatore
3. The Superintendent of Prison  
Central Prison  
Coimbatore - 18
4. The Inspector of Police  
All Women Police Station (West)  
Coimbatore City

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records from the second respondent in connection with order C.No.15/G/IS/2023 dated 25.2.2023 and quash the same and produce the petitioner's husband namely

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K.Suresh Babu @ Vellaikaran, son of Kailash Babu, aged 28 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 : Mr.P.Pugalenth  
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 28.07.2023, the following order was made:

**'H.C.P.No.1400 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 10.07.2023 inter alia assailing a 'detention order dated 25.02.2023 bearing reference C.No.15/G/IS/2023' [hereinafter 'impugned preventive detention order' for the sake of*



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*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, wife of the detenu is the petitioner.*

*3. Mr.P.Pugalenth, 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 376AB and 376DB of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Sections 5(m), 5(l), 5(g) read with Section 6 of 'The Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of brevity] in Crime No.4 of 2023 on the file of All Women Police Station (West), Coimbatore City.*

*4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 ground that "live and proximate link"*



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*between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 24.01.2023 but the impugned detention order has been made only on 25.02.2023.*

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

*7. Mr.A.Gokulakrishnan, 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 in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. This also means that short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also for the sake of brevity, convenience and clarity.

3. Mr.P.Pugalenth, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public



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Prosecutor, assisted by Mr.C.Aravind, learned counsel, for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission the point that 'live and proximate link' between the grounds of detention and purpose of detention has snapped was raised. Elaborating on the above submission, learned counsel submitted that date of arrest in the ground case is 24.01.2023 but the impugned preventive detention order has been made only on 25.02.2023 and therefore, live and proximate link between grounds of detention 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*



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**Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw**

**(SC) 813 : 2022 SCC OnLine SC 1333]**. To be noted, **Banik** case 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 others** reported vide Neutral Citation of Madras High Court being



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**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 similar orders in HCP cases.

8. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.4 of 2023 on the file of All Women Police Station (West), Coimbatore City for alleged offence under Sections 376AB and 376DB of IPC and Sections 5(m), 5(l), 5(g) read with Section 6 of POCSO Act and therefore this solitary case is the sole substratum of the impugned preventive detention order .

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 25.02.2023 bearing reference C.No.15/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.K.Suresh Babu @ Vellaikaran, male, aged 28 years, son of



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Thiru.Kailash Babu, 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.)

27.09.2023

Index : Yes / No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

*gpa*

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

To

1. The Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009
2. The Commissioner of Police / Detaining Authority  
Coimbatore City, Coimbatore
3. The Superintendent of Prison  
Central Prison, Coimbatore - 18
4. The Inspector of Police  
All Women Police Station (West)  
Coimbatore City
5. The Public Prosecutor,  
High Court, Madras.

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

*gpa*

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