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H.C.P.No.1346 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.1346 of 2023

Kalaiselvam

.. Petitioner / Father of the detenu

Vs

1. The State of Tamil Nadu rep. By its
Principal Secretary to Government (Home)
Prohibition and Excise Department
Secretariat, Chennai - 9
2. The Commissioner of Police
Salem City
3. The Superintendent of Prison
Central Prison
Salem
4. The Inspector of Police
Pallapatti Police Station
Salem District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pursuant to the detention order vide C.M.P.No.28/Goonda/Salem City/2023 dated 24.04.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Samuvel, aged

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about 20 years, who is detained in Central Prison, Salem before this Court and set him at liberty forthwith.

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For Petitioner : Mr.J.Titus Enock
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 01.08.2023 along with two other connected HCPs i.e., H.C.P.Nos.1347 and 1348 of 2023, the following common order was made:

' H.C.P.Nos.1346, 1347 and 1348 of 2023

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

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

Captioned Habeas Corpus Petitions have been filed in this Court on 11.07.2023 inter alia assailing 'detention orders dated 24.04.2023 bearing reference C.M.P.No.28/Goonda/Salem City/2023,



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C.M.P.No.27/Goonda/Salem City/2023 and
C.M.P.No.29/Goonda/Salem City/2023' respectively
(hereinafter 'impugned preventive detention orders' for the
sake of convenience and clarity) made by 'second respondent'
[hereinafter 'Detaining Authority' for the sake of
convenience]. To be noted, fourth respondent is the
Sponsoring Authority.

2. To be noted, father of the detenu is the petitioner in
H.C.P.No.1346 of 2023, wife of the detenu is the petitioner in
H.C.P. No.1347 of 2023 and brother of detenu is the petitioner
in H.C.P. No.1348 of 2023.

3. Mr.M.Karthick, learned counsel on record for
petitioners, expressed regret for missing the matter in the
previous listing on 25.07.2023. Learned counsel submits that
ground case qua the detenus is for alleged offences under
Sections 341, 392 r/w 397, 506(ii) of 'The Indian Penal Code
(45 of 1860)' [hereinafter 'IPC' for the sake of convenience
and clarity] in Crime No.120 of 2023 on the file of Pallapatty
Police Station.

4. The aforementioned impugned preventive detention
orders have been made on the premise that the detenu in all
three HCPs is a 'Goonda' under Section 2(f) of 'The Tamil
Nadu Prevention of Dangerous Activities of Bootleggers,



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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 orders have been assailed inter alia on the grounds that 'live and proximate link' between the grounds of detention and purpose of detention has snapped and some of the pages in the grounds booklet furnished to the detenu are not readable.

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 Petitions 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



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continue to be used in the instant final order also for the sake of brevity, convenience and clarity.

3. Mr.J.Titus Enock, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public 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 points that 'live and proximate link' between the grounds of detention and purpose of detention has snapped and some of the pages in the grounds booklet furnished to the detenu are not readable were urged, *however, today in the Final Hearing Board*, learned counsel for petitioner posited his argument on the first point and submits 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 22.03.2023 but the impugned preventive detention order has been made only on 24.04.2023.

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor,



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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 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.



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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 similar orders in HCP cases.

8. Besides ground case, one adverse case in Crime No.46 of 2023 on the file of Pallapatty Police Station has been referred to in the grounds of impugned preventive detention order but the occurrence was on 25.01.2023 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.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.04.2023 bearing reference C.M.P.No.28/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Samuvel, male, aged 20 years, son of Thiru.Kalaiselvam, 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

Speaking order/Non-speaking order

Neutral Citation : Yes/No

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



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To

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1. The Principal Secretary to Government (Home)
Prohibition and Excise Department
Secretariat, Chennai - 9
2. The Commissioner of Police
Salem City
3. The Superintendent of Prison
Central Prison
Salem
4. The Inspector of Police
Pallapatti Police Station
Salem District
5. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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