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H.C.P.No.1379 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.1379 of 2023

Vanitha

.. Petitioner /
Mother of the detenu

Vs

State rep. By

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George, Chennai - 600 009
2. The District Magistrate and
District Collector
Namakkal District
Namakkal
3. The Superintendent of Police
Namakkal District
Namakkal
4. The Superintendent of Prison
Central Prison, Salem
5. The Inspector of Police
Veppadia Police Station
Namakkal 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 entire records in C.M.P.No.32/Goonda/2022(M1) dated 18.10.2022 on the file of the District Magistrate and District Collector, Namakkal District, Namakkal, the second respondent to produce the detenu Thiru. Tamil alias Tamilarasan, son of Durairaj, aged about 38 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Ms.S.Sengkodi
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 26.07.2023, the following order was made:

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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



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Court on 19.07.2023 inter alia assailing a 'detention order dated 18.10.2022 bearing reference C.M.P.No.32/Goonda/2022(M1)' (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, fifth respondent is the Sponsoring Authority.

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

3. Ms.S.Sengkodi, learned counsel on record for petitioner submits that ground case qua the detenu is for alleged offence under Section 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 363 and 302 of IPC in Crime No.193 of 2022 on the file of Veppadai 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 ground that some of the pages in the booklet furnished to the detenu are illegible.

6. Prima facie case made out for admission. Admit. Issue



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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 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. Ms.S.Sengkodi, 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 point that some of the pages in the

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grounds booklet furnished to the detenu are illegible impairing detenu's right to make an effective representation was urged but in the final hearing Board, learned counsel changed his line of attack qua his campaign against the impugned preventive detention order and submitted that the detenu was arrested on 27.08.2022 but the impugned preventive detention order has been made only on 18.10.2022 resulting in live and proximate link between grounds and purpose of detention getting 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 arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in



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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 **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.



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8. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.193 of 2022 on the file of Veppadai Police Station for alleged offence under Section 363 of IPC subsequently altered into one under Sections 363 and 302 of IPC 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 18.10.2022 bearing reference C.M.P.No.32/Goonda/2022(M1) made by the second respondent is set aside and the detenu Thiru.Tamil alias Tamilarasan, male, aged 38 years, son of Thiru.Durairaj, 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, Salem.

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To

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Veppadia Police Station
Namakkal District
6. The Public Prosecutor,
High Court, Madras.



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

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