



WEB COPY



H.C.P.No.1455 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.1455 of 2023

Santhi
D/o.Angudurai

.. Petitioner

Vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Tiruppur City
Tiruppur - 641 603.
3. The Superintendent of Prison
Central Prison
Coimbatore - 641 018.
4. The Inspector of Police
North Police Station
Tiruppur City - 641 602.

.. 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 connected

Page Nos.1/9



H.C.P.No.1455 of 2023

with the detention order of 2nd respondent in C.No.03/G/IS/Tiruppur City/2023 dated 16.02.2023 and quash the same and direct the respondents to produce the body and person of detenu namely Ganesan S/o. Sivanantham aged about 38 years detained in Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam
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 04.08.2023, the following order was made:

'H.C.P.No.1455 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 26.07.2023 inter alia assailing a 'detention



WEB COPY



H.C.P.No.1455 of 2023

order dated 16.02.2023 bearing reference C.No.03/G/IS/Tiruppur City/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, sister of the detenu is the petitioner.

3. Mr.B.M.Santharam, 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 294(b), 323, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.1468 of 2022 on the file of North Police Station, Tiruppur City.

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 'live and proximate link



between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 09.12.2022 but the impugned preventive detention order has been made only on 16.02.2023.

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 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.B.M.Santharam, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the



H.C.P.No.1455 of 2023

respondents are before us.

WEB COPY

4. Elaborating on paragraph No.5 of the Admission Board order, learned counsel submitted that the detenu was arrested on 09.12.2022 but the impugned preventive detention order has been made only on 16.02.2023 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



H.C.P.No.1455 of 2023

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 **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**



H.C.P.No.1455 of 2023

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, three adverse cases have been referred to in the grounds of impugned preventive detention order namely, Crime No.270 of 2018 on the file of Velampalayam Police Station, Tiruppur City (occurrence was on 20.04.2018), Crime No.1577 of 2018 on the file of North Police Station, Tiruppur City (occurrence was on 30.12.2018) and Crime No.190 of 2019 on the file of Velampalayam Police Station, Tiruppur City (occurrence was on 15.04.2019) and therefore time consumed 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 16.02.2023 bearing reference C.No.03/G/IS/Tiruppur City/2023 made by the second respondent is set



H.C.P.No.1455 of 2023

aside and the detenu Thiru.Ganesan, male, aged 38 years, son of Thiru.Sivanantham, 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

Speaking order

Neutral Citation : Yes

mk

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

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Tiruppur City
Tiruppur - 641 603.
3. The Superintendent of Prison
Central Prison
Coimbatore - 641 018.
4. The Inspector of Police
North Police Station
Tiruppur City - 641 602.
5. The Public Prosecutor,
High Court, Madras.

Page Nos.8/9



WEB COPY



H.C.P.No.1455 of 2023

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

mk

H.C.P.No.1455 of 2023

27.09.2023

Page Nos.9/9