



H.C.P.No.1776 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1776 of 2022

K. Kannan,
S/o. late Kuppusamy

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.
2. The District Magistrate and District Collector
Erode - 638 001,
Erode District.
3. The Superintendent of Police,
Erode District,
Erode - 638 001.
4. The Superintendent Prison,
Special Prison for Women,
Central Prison,
Coimbatore - 641 018

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5. The Inspector of Police,
Erode South Police Station,
Crime No. 279 of 2022,
Erode District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenue by name Malathi , wife of Kandasamy, aged 37 years, presently confined at Special Prison for Women, Coimbatore before this Hon'ble Court and set her at liberty forthwith, after calling for the records pertaining to the detention order dated 18.08.2022 in Cr.M.P. No. 24/Sexual offender/2022 C1 passed by the 2nd Respondent and quash the same.

For Petitioner	:	Mr.N.Manokaran
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by brother of the detenue assailing a 'preventive detention order dated 18.08.2022 bearing reference Cr.M.P.No.24/Sexual offender/2022 C1' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and



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second respondent is the detaining authority as the impugned detention order has been made by second respondent.

2. Impugned detention order has been made under '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] on the premise that the detinue is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.279 of 2022 on the file of Erode South Police Station for alleged offences under Sections 5(I), 5(m), 5(n) read with Sections 6, 16 and 17 of Protection of Child from Sexual Offences Act, 2012 and Sections 468, 471 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 34 and 35 of Aadhaar (Targeted Delivery of Financial



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and Other Subsidies Benefits and Services) Act, 2016. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.N.Manokaran, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. Learned counsel for petitioner 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 02.06.2022 but the impugned detention order has been made only on 18.08.2022.

6. Mr.R.Muniyapparaj, 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.



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7. 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 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.

8. 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 other orders in HCP cases.

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.08.2022 bearing reference Cr.M.P.No.24/Sexual offender/2022 C1 made by the second respondent is set aside and the detainee Tmt.Malathi, aged 37 years, Wife of Thiru.Kandasamy, 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.)

(M.N.K.,J.)

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Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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6. The Public Prosecutor
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