



H.C.P.No.1515 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 14.09.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.1515 of 2023

Pachiyammal

.. Petitioner/Mother of detenu

VS

1.State Rep by

The Secretary to Government
Home, Prohibition and Excise Department,
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,
Veppadai 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 records in No.C.M.P.No.26/GOONDA/2022 (M1) dated 26.09.2022 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Thiru.Deepan, S/o.Venkatesh, aged about 25 years, No.5/700, Thiruveni Nagar, Veppadi, Elanthakuttai, Kumarapalayam Taluk, Namakkal District, now confined at Central Prison at Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Siranjeevi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 09.08.2023, the following order was made:



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

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

Captioned Habeas Corpus Petition has been filed in this Court on 02.08.2023 *inter alia* assailing a 'detention order dated 26.09.2022 bearing reference C.M.P. No.26/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 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



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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 there is delay in passing the impugned preventive detention order.

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.

(M.S.J.,) (R.S.V.J.,)
09.08.2023

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2. The aforementioned 09.08.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. To be noted, 'detention order dated 26.09.2022 bearing reference C.M.P.No.26/Goonda/2022 (M1) made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.193 of 2022 on the file of Veppadai Police Station for an alleged offence under Section 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].



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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.

5. Mr.R.Siranjeevi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. Learned counsel for petitioner both in the Admission Board as well as in the final hearing Board predicated his campaign against the impugned preventive detention order on the point that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as petitioner was arrested on 25.08.2022 but the impugned detention order has been made only on 26.09.2022.

7. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.



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8. 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 the proposal by the 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 other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

9. 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



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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 other orders in HCP cases.

10. Besides ground case, two adverse cases have been referred to in the grounds of impugned preventive detention order. One adverse case is Crime No.78 of 2022 on the file of D5, Karuppur Police Station, Salem City (occurrence was on 06.03.2022) and other is Crime No.153 of 2022 on the file of D3, Sooramangalam Police Station, Salem City (occurrence was on 07.03.2022) and therefore, the delay remains unexplained.

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

12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.09.2022 bearing reference



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C.M.P.No.26/GOONDA/2022 (M1) made by the second respondent is set aside and the detenu Thiru.Deepan, S/o.Thiru.Venkatesh, aged about 25 years, 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.)
14.09.2023

Index : Yes
Neutral Citation : Yes
Speaking order
rsi

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



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

rsi

To

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Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Namakkal District,
Namakkal.
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- 6.The Public Prosecutor
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