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H.C.P.No.1523 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.1523 of 2023

Latha
D/o.Balu

.. Petitioner

Vs.

1. State rep. by
The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-9.
2. The Commissioner of Police
Salem City.
3. The Superintendent of Prison
Central Prison
Salem.
4. The Inspector of Police
Annadanapatty Police Station
Salem City.

..Respondents



H.C.P.No.1523 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records in CMP.No.32/Goonda/Salem City/2023, dated 26.04.2023 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Thiru.Vijay@ Suzhi, S/o.Balu aged about 22 years 100/105 Tiruvalluvar Nagar, Moonankaradu, Salem District now confined at Central Prison, at Salem before this Honble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Siranjeevi
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.,]

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court in the Admission Board on 10.08.2023, the following proceedings / order was made:

'H.C.P.No.1523 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.



WEB COPY



H.C.P.No.1523 of 2023

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

Captioned Habeas Corpus Petition has been filed in this Court on 03.08.2023 inter alia assailing a 'detention order dated 26.04.2023 bearing reference C.M.P.No.32/Goonda/Salem City/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] 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, sister of the detenu is the petitioner.

3. Ms.S.Sengokodi, learned counsel on record for petitioner submits that ground case qua the detenu is for alleged offences under Sections 395 read with 397 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.163 of 2023 on the file of Annadanapatty 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



WEB COPY



H.C.P.No.1523 of 2023

assailed inter alia on the ground that family members were not informed about the detention of the detenu.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

3. 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. Be that as it may, we shall continue to use the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 26.04.2023 bearing reference C.M.P.No.32/Goonda/Salem City/2023 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.



H.C.P.No.1523 of 2023

WEB COPY

4. 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.

5. A perusal of paragraph No.5 of aforementioned Admission Board order dated 10.08.2023 brings to light that at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that family members were not informed about the detention of the detenu but today in the final hearing Board, Mr.R.Siranjeevi, learned counsel for petitioner changed his line of attack and submitted that the detenu was arrested on 26.03.2023 but the impugned preventive detention order has been made only on 26.04.2023 and therefore, live and proximate link between the grounds and purpose of detention has snapped.

6. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time



H.C.P.No.1523 of 2023

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.

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.



H.C.P.No.1523 of 2023

WEB COPY

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 **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.

9. Besides ground case, two adverse cases have been referred to in the grounds of impugned preventive detention order. One adverse case is Crime No.531 of 2021 on the file of Annadanapatty Police Station (occurrence was on 04.08.2021) and other is Crime No.588 of 2021 on the file of Annadanapatty Police Station (occurrence was on 02.09.2021) and therefore time consumed remains unexplained.

Page Nos.7/11



H.C.P.No.1523 of 2023

WEB COPY

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 26.04.2023 bearing reference C.M.P.No.32/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Vijay @ Suzhi, male, aged 22 years, son of Thiru.Balu, 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

Neutral Citation : Yes

mk

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

Page Nos.8/11



WEB COPY



H.C.P.No.1523 of 2023

To

1. State rep. by
The Secretary to Government
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2. The Commissioner of Police
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3. The Superintendent of Prison
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5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1523 of 2023

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

mk

H.C.P.No.1523 of 2023

27.09.2023

Page Nos.10/11



WEB COPY



H.C.P.No.1523 of 2023