



H.C.P.No.1539 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.1539 of 2023

Pavithra
W/o.Ajith @ Musthafa

.. Petitioner

Vs

1. State of Tamil Nadu
Rep. by the Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Office of the Commissioner of Police
Tiruppur City.
3. The Superintendent of Prison
Central Prison
Coimbatore, Coimbatore District.
4. The Inspector of Police
North Police Station
Tiruppur City.

.. Respondents

Page Nos.1/10



H.C.P.No.1539 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the Detention order vide C.No.16/G/IS/Tiruppur City/2023 dated 05.04.2023, passed by the second Respondent and quash the same and direct the respondents herein to produce the petitioner's husband namely Ajith alias Musthafa, S/o. Chandrasekar, aged 26 years (Who is presently under going detention in the Central prison, Coimbatore) before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.P.Narayana Prasadh
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 14.08.2023, the following order was made:

'H.C.P.No.1539 of 2023

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



H.C.P.No.1539 of 2023

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

WEB COPY

Captioned Habeas Corpus Petition has been filed in this Court on 07.08.2023 inter alia assailing a 'detention order dated 05.04.2023 bearing reference C.No.16/G/IS/Tiruppur 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, wife of the detenu is the petitioner.

3. Mr.P.Narayana Prasadh, learned counsel on record for petitioner is before this Court. Learned counsel for petitioner submits that ground case qua the detenu was registered under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] (Suspicious Death) and subsequently, altered into Sections 302 read with 201 of 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.284 of 2023 on the file of Tiruppur City, North 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



WEB COPY



H.C.P.No.1539 of 2023

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 grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

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



H.C.P.No.1539 of 2023

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.P.Narayana Prasadh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph No.5 of the Admission Board order, at the time of admission the point that some of the pages in the 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 24.02.2023 but the impugned preventive detention order has been made only on 05.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



H.C.P.No.1539 of 2023

WEB COPY

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 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



H.C.P.No.1539 of 2023

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.

8. Besides ground case, one adverse case has been referred to in the grounds of impugned preventive detention order namely, Crime No.282 of 2023 on the file of North Police Station, Tiruppur City (occurrence was on 21.02.2023) and therefore time consumed remains unexplained.



H.C.P.No.1539 of 2023

WEB COPY

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 05.04.2023 bearing reference C.No.16/G/IS/Tiruppur City/2023 made by the second respondent is set aside and the detenu Thiru.Ajith alias Musthafa, male, aged 26 years, son of Thiru.Chandrasekar, 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

mk

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

Page Nos.8/10



H.C.P.No.1539 of 2023

WEB COPY

To

1. State of Tamil Nadu
Rep. by the Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Office of the Commissioner of Police
Tiruppur City.
3. The Superintendent of Prison
Central Prison
Coimbatore, Coimbatore District.
4. The Inspector of Police
North Police Station
Tiruppur City.
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1539 of 2023

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

mk

H.C.P.No.1539 of 2023

27.09.2023

Page Nos.10/10