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H.C.P.No.1559 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.1559 of 2023

Saradha
W/o.Saravanan

.. Petitioner

Vs

1. The Secretary to the Government
Home Prohibition & Excise Department
Secretariat
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Tiruppur City
Tiruppur.
3. The Superintendent
Central Prison, Coimbatore.
4. State Rep. by
The Inspector of Police
Nallur Police Station
Tiruppur City
Tiruppur 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 Connection with the order of Detention passed by the 2nd respondent dated 07.03.2023 in C.No.08/G/IS/Tiruppur/2023 against the petitioner's son Subash Chandra Bose @ Subash, S/o.Saravanan, who is confined at Central Prison, Coimbatore and Set aside the same and consequently direct the respondents to produce the detenu before the Honble court and Set him at Liberty.

For Petitioner	:	Mr.A.Saranraj
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.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 07.03.2023 bearing reference C.No.08/G/IS/Tiruppur City/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

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2. Impugned preventive detention order has been made under 'The

WEB.COM 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 detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.43 of 2023 on the file of Nallur Police Station, Tiruppur City for alleged offences under Sections 147, 294(b), 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.A.Saranraj, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that one point is, the detenu was arrested on 24.01.2023 but the impugned preventive detention order has been made only on 07.03.2023 resulting in live and proximate link between grounds and purpose of detention getting 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 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 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**



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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, one adverse case has been referred to in the grounds of impugned preventive detention order namely, Crime No.576 of 2022 on the file of Veerapandi Police Station, Tiruppur City (occurrence was on 08.08.2022) and therefore time consumed remains unexplained.

10. 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 07.03.2023 bearing reference C.No.08/G/IS/Tiruppur City/2023 made by the second respondent is set



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aside and the detenu Thiru.Subash Chandra Bose alias Subash, male, aged 27 years, son of Thiru.Saravanan, 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 Secretary to the Government
Home Prohibition & Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Tiruppur City
Tiruppur.
3. The Superintendent
Central Prison, Coimbatore.
4. State Rep. by The Inspector of Police
Nallur Police Station
Tiruppur City, Tiruppur District.
5. The Public Prosecutor,
High Court, Madras.

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

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