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H.C.P.No.1587 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.1587 of 2023

Selvi
W/o.Velayutham

.. 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



H.C.P.No.1587 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 in Connection with the order of detention passed by the 2nd respondent dated 24.02.2023 in C.No.05/G/IS/Tiruppur/2023 against the petitioner's son Ramesh aged 27 years S/o Velayutham who is confined at Central Prison, Coimbatore and Set aside the same and consequently direct the respondents to produce the detainee 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.,**]

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 22.08.2023, the following order was made:

'H.C.P.No.1587 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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



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H.C.PNo.1587 of 2023

Captioned Habeas Corpus Petition has been filed in this Court on 10.08.2023 inter alia assailing a 'detention order dated 24.02.2023 bearing reference C.No.05/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, mother of the detenu is the petitioner.

3. Mr.Saranraj, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu for alleged offences under Sections 147, 294(b), 324, 307 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.43 of 2023 on the file of Nallur Police Station, Tiruppur City.

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 assailed inter alia on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has



snapped as the detenu was arrested on 24.01.2023 but the impugned preventive detention has been passed on 24.02.2023.

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



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4. Elaborating on paragraph No.5 of the Admission Board order, learned counsel submitted that the detenu was arrested on 24.01.2023 but the impugned preventive detention order has been made only on 24.02.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

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



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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.

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.



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8. Besides ground case, one adverse cases has been referred to in the grounds of impugned preventive detention order namely, Crime No.965 of 2020 on the file of Veerapandi Police Station, Tiruppur City (occurrence was on 14.12.2020) and therefore time consumed remains unexplained.

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 24.02.2023 bearing reference C.No.05/G/IS/Tiruppur City/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh, male, aged 27 years, son of Thiru.Velayutham, 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.

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

mk

To

1. The Secretary to the Government
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Secretariat, Chennai-600 009.
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