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H.C.P.No.2118 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2118 of 2022

Kamala

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Erode.
- 3.The Superintendent,
Special Prison for Women, Coimbatore.
- 4.The Superintendent of Police,
Superintendent of Police Office,
Erode.
- 5.The Inspector of Police,
Erode South Police Station,
Erode.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire

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records, relating to the petitioner's daughter's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 18.08.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.23/Sexual Offender/2022/C1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's daughter namely Indirani @ Sumaiyaa, D/o.Saravanan, aged 41 years before this Court and set the petitioner's daughter at liberty from detention, now the petitioner's daughter detained at Special Prison for Women, Coimbatore.

For Petitioner : Mr.Deepan Uday
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 detinue assailing a 'preventive detention order dated 18.08.2022 bearing reference Cr.M.P.No.23/Sexual Offender/2022 C1' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under '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] on the premise that the detainee is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3.The ground case which is the sole substratum of the impugned detention order is Crime No.279 of 2022 on the file of Erode South Police Station for alleged offences under Sections 5(l), 5(m), 5(n) r/w 6, 16 and 17 of Protection of Children From Sexual Offences Act, 2012 and Sections 468, 471 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



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impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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

5. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 03.06.2022 but the impugned detention order has been made only on 18.08.2022.

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 for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public 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 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.

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



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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.

9. We are also informed without any dispute by both sides that co-accused in the ground case was also clamped with an identical preventive detention order, co-accused assailed the same vide H.C.P.No.1776 of 2022 and this HCP was allowed in and by an order dated 03.04.2023 by this Bench on the same point, reported vide Neutral Citation of Madras High Court being **2023:MHC:1705**.

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 detention order dated 18.08.2022 bearing reference Cr.M.P.No.23/Sexual Offender/2022/C1 made by the second



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respondent is set aside and the detenue Tmt.Indirani @ Sumaiyaa, female, aged 41 years, Wife 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.) (M.N.K.,J.)
24.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Coimbatore.

To

- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Erode.
- 3.The Superintendent of Police,
Special Prison for Women, Coimbatore.
- 4.The Superintendent of Police,
Superintendent of Police Office, Erode.
- 5.The Inspector of Police,
Erode South Police Station, Erode
- 6.The Public Prosecutor,
High Court, Madras.

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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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