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H.C.P.No.2368 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.2368 of 2022

Sudha

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police/Detaining Authority,
Tiruppur City, Tiruppur.

3.The Superintendent,
Central Prison, Coimbatore.

4.State rep. By
The Inspector of Police,
Velampalayam Police Station,
Tiruppur District.

.. Respondents

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 second respondent dated 04.11.2022 in C.No.73/G/IS/Tiruppur City/2022 against the petitioner's son Dhineshkumar, aged 27 years, son of Marimuthu, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.



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For Petitioner : Mr.A.Saranraj
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

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 04.11.2022 bearing reference C.No.73/G/IS/Tiruppur City/2022' [hereinafter 'impugned 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 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 detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.497 of 2022 on the file of 15 Velampalayam Police Station for alleged offence under Sections 302 and 380 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.A.Saranraj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.

5. As regards the live and proximate link between the grounds of detention and purpose of detention has snapped, this order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 05.06.2023, which reads as follows:

'When the matter was taken up, learned counsel for petitioner pointed out that the date of arrest of the detenu is 06.08.2022 but the impugned preventive detention



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*order has been made only on 04.11.2022. Learned counsel placing reliance on the **Banik** principle submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped.*

2.Learned Additional Public Prosecutor requested for a short accommodation to get instructions on this aspect of the matter.

3.List one week hence. List on 12.06.2023.'

6. Today, learned State Additional Public Prosecutor who have obtained instructions submits that there are two facets of explanation qua 'live and proximate link' point. The first facet is co-accused were absconding. The second facet is the lab report was awaited. In the case on hand, as would be evident from the narrative supra, impugned preventive detention order is predicated on one solitary case i.e., there is no adverse case. Though there is no impediment in a preventive detention order being clamped on the basis of a solitary case, we emphasize this aspect of the matter only for the limited purpose of saying that the two facets of explanation given by the learned Prosecutor is not acceptable. The ground case being a solitary case and the sole substratum on which the impugned preventive detention order is predicated, the lab report being awaited or co-accused absconding are not explanations which found favour with us. As regards the argument that live and proximate link between grounds of detention



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and purpose of detention had snapped, the date of arrest is 06.08.2022 but the date of impugned preventive detention order is 04.11.2022.

7. Mr.R.Muniyapparaj, 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.

8. 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



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'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

9. 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 other orders in HCP cases.

10. We are informed by learned Prosecutor that charge sheet has since been filed in the Trial Court on 07.11.2022. We are further informed by learned Prosecutor that charge sheet has been filed within the stipulated time i.e., 90 days. If the detenu moves a bail application in the Trial Court, though obvious we make it clear that it is open to the Prosecutor to oppose the same and we further make it clear (though obvious) that the learned Trial Judge shall consider the bail application



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on its own merit and in accordance with law untrammelled by this order which has been made for the limited purpose of dislodging the above preventive detention order.

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

12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.11.2022 bearing reference C.No.73/G/IS/Tiruppur City/2022 made by the second respondent is set aside and the detenu Thiru.Dhineshkumar, aged 27 years, son of Thiru.Marimuthu, 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.) (K.G.T.,J.)
12.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
Tiruppur City, Tiruppur.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Inspector of Police,
Velampalayam Police Station,
Tiruppur District.
- 5.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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