

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2569 of 2022

Ishrath Fathima
W/o.Sheik Rahaman

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Avadi Police Commissionerate
Avadi City
Avadi.
3. The Superintendent
Central Prison-II, Puzhal
Chennai.
4. The Inspector of Police
T-3, Korattur Police Station
Chennai.

..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 of the second respondent herein pertaining to the detention order made in BCDFGISSSV No.156/2022 dated 15.11.2022 and set aside the same and direct the respondents to produce the body of the detenu namely, Sheik Rahaman, aged about 25 years, now detained in Puzhal Prison II, Puzhal, Chennai before this Hon'ble Court and set the detenu at liberty forthwith.

For Petitioner	:	Mr.J.Samiullah
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 wife of the detenu assailing a 'preventive detention order dated 15.11.2022 bearing reference No.156/BCDFGISSSV/2022' [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.

2. Impugned preventive 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.502 of 2022 on the file of T-3 Korattur Police Station for alleged offence under Section 22(C) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' 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.

4. Mr.J.Samiullah, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor, learned counsel 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 arrest in the ground case is 21.09.2022 but the impugned preventive detention order has been made only on 15.11.2022.

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 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.

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 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 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.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.11.2022 bearing reference No.156/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sheik Rahaman, male, aged 25 years, son of Thiru.Thurab 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.)

14.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

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Rep. by its Additional Chief Secretary to Government
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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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