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HCP No.2551 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2551 of 2022

Mohanraj @ Mohan
S/o.Ramesh

.. Petitioner

Vs.

1. The Principal Secretary to Government
Home Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Tambaram City.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai-66.



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4. The Inspector of Police
T-4, Sankar Nagar 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 in connection with the order of detention passed by the second respondent dated 21.10.2022 in Memo No.171/BCDFGISSSV/2022 against Mohanraj @ Mohan, male, aged 24 years, S/o.Ramesh, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Senthilvel
For Respondents	:	Mr.R.Muniyapparaj
		Additional Public Prosecutor
		assisted by
		Mr.M.Sylvester John
		Advocate

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 the detenu assailing a 'preventive detention order dated



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21.10.2022 bearing reference BCDFGISSSV No.171/2022' [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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases and one ground case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.431 of 2022 on the file of T-4 Sankar Nagar Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 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



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factual matrix or be detained further by facts.

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4. Mr.S.Senthilvel, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor (assisted by learned counsel Mr.M.Sylvester John) 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 23.08.2022 but the impugned preventive detention order has been made only on 21.10.2022.

6. Mr.R.Muniyapparaj, 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



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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.



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9. We are informed that the co-detenu in the ground case was also clamped with a similar preventive detention order i.e., preventive detention order akin to the impugned preventive detention order which is challenged i.e., assailed in the captioned HCP. We are further informed that the co-detenu has assailed the detention order vide HCP No.2314 of 2022 and the same was allowed by this Bench on 25.04.2023 which reads as follows:

'Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of the detenu assailing a 'preventive detention order dated 08.10.2022 bearing reference BCDFGISSSV No.155/2022' [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.

3. There are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.431 of 2022 on the file of T-4 Sankar Nagar Police Station for alleged



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offences under Sections 341, 294(b), 336, 427, 392, 397 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, 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. 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 16.08.2022 but the impugned detention order has been made only on 08.10.2022.

6. 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.

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



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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 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 detention order dated 08.10.2022 bearing reference BCDFGISSSV No.155/2022 made by the second respondent is set aside and the detenu Thiru.Madhan @ Kulla Madhan, aged 23 years, son of Thiru.Kandeepan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



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There shall be no order as to costs.'

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10. There is no dispute before us that the point on which HCP No.2314 of 2022 was allowed is available for the petitioner's campaign against the preventive detention order in the captioned HCP also. This buttresses the argument of the petitioner and the matter gravitates towards dislodging the impugned 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 preventive detention order dated 21.10.2022 bearing reference BCDFGISSSV No.171/2022 made by the second respondent is set aside and the detenu Thiru.Mohan Raj @ Mohan, aged 24 years, son of Thiru.Ramesh, 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.)
02.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

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



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

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