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H.C.P.No.2596 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2596 of 2022

Kalyani

W/o.Suresh Babu

..

Petitioner /
mother of the detenu

Vs.

1. State of Tamil Nadu
Rep. By The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai – 600 054
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai -600 066
4. The Inspector of Police
M-5, Ennore Police Station
Chennai – 600 057

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the detention order in Memo No.159/BCDFG|ISSSV/2022, dated 17.11.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Rajeshkumar @ Bomb Rajesh, son of Suresh Babu, aged about 27 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son at liberty.

For Petitioner : Mr.D.Gopikrishnan
for Mr.M.Thiyagarajan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.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 mother of detenu assailing a 'preventive detention order dated 17.11.2022 bearing reference Memo No.159/BCDFG|ISSSV/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 the second respondent.

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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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.577 of 2022 on the file of M5 Ennore Police Station for alleged offences under Sections 147, 148, 323, 302, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Section 34 of IPC altered to 147, 148, 323, 302, 506(ii) IPC read with Section 34, 120(B) of IPC. 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.D.Gopikrishnan, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional



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Public Prosecutor (assisted by learned counsel Mr.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 petitioner was arrested on 19.09.2022 but the impugned detention order has been made only on 17.11.2022.

6. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. Considering the facts and circumstances of the case 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



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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** [Neutral Citation of Madras High Court being **2023/MHC/334**], **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** [Neutral Citation of Madras High Court being **2023/MHC/733**], **Sangeetha Vs. The Secretary to the Government and others** [Neutral Citation of Madras High Court being **2023:MHC:1110**], **N.Anitha Vs. The Secretary to Government and others** [Neutral Citation of Madras High Court being **2023:MHC:1159**] and a series of other orders in HCP cases.



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9. Beside the above point, learned counsel raised one more point and that turns on imminent possibility of detenu being enlarged on bail. In this regard, the most relevant part of the grounds of detention of the impugned preventive detention order is contained in paragraph 4 and the same reads as follows:

'4.....Further, in a similar case registered at R-3 Ashok Nagar Police Station Cr.No.59/2021, u/s.147, 148, 449, 324 and 302 IPC, bail was granted to the accused Thiru.Balaji by the Court of Principal Sessions, Chennai in Crl.M.P.No.10485 of 2021....'

10. As regards Balaji's case, the bail order is dated 26.05.2021. We are informed without any disputation that paragraph 5 of Balaji's case which is available in the booklet in H.C.P.No.2595 of 2022 (previous matter today) is the same and the same reads as follows:

'5. The petitioners have been to custody for the past 75 days. No previous case reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

11. The above speaks for itself. To put it differently, bail has been granted in Balaji's case *inter alia* owing to then obtaining / prevailing Covid-19 situation and also because there was no previous case in Balaji's case.



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Both these facets are not available both in the adverse case and in the ground case in the impugned preventive detention order now on hand. The reason is, Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022. Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 *inter alia* extended time across the Board. The impugned preventive detention order itself talks about one adverse case and one ground case and therefore, this is not a solitary case as in Balaji's case. Owing to this reason, Balaji's case and the case on hand are not really comparable. To put it differently, the two cases are dissimilar. As Detaining Authority has compared two dissimilar cases to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail, the subjective satisfaction in this regard is impaired, which means that the impugned preventive detention order deserves to be dislodged.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.11.2022 bearing reference 159/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Rajeshkumar @ Bomb Rajesh, son of Suresh Babu, aged about 27 years is directed to be set at liberty forthwith, if not required in connection



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with any other case / cases. There shall be no order as to costs.

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(M.S.,J.)

(K.G.T.,J.)

07.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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2. The Commissioner of Police
Office of the Commissioner of Police
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3. The Superintendent of Prison
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5. The Public Prosecutor
Madras High Court, Chennai



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

gpa

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