



H.C.P(MD)No.610 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

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Jenit @ Jenith

.. Petitioner

VS

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari at Nagercoil.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order of the respondent No.2 in P.D.No.17 of 2023 dated 02.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Jenit @ Jenith, son of Nagarajan, aged about 24 years, now detained as “Goonda” at Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 02.04.2023 bearing reference P.D.No.17/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Asaripallam Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

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



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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. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.18 of 2023 on the file of Asaripallam Police Station for alleged offences under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4. Mr.R.Alagumani, learned counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submitted 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 27.02.2023 but the impugned preventive detention order has been made only on 02.04.2023.



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6. Mr.S.Ravi, 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 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.



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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 similar orders in HCP cases.

9. To be noted, out of the two adverse cases, the first adverse case in Crime No.1049 of 2020 on the file of Kottar Police Station (occurrence was on 27.11.2020) and second adverse case is in Crime No. 1050 of 2020 on the file of Kottar Police Station (occurrence was on 27.11.2020) and therefore time consumed remains unexplained.

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



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.04.2023 bearing reference P.D.No.17/2023 made by the second respondent is set aside and the detenu Jenit @ Jenith, aged 24 years, son of Nagarajan, 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.)
03.10.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

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



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- To
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 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
R.SAKTHIVEL, J.,

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