



HCP(MD)No.1182 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.1182 of 2023

A.Lilly

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2. The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.

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

... Respondents

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.28 of 2023 dated 14.05.2023 and quash the same and direct the respondents to produce the body or person of the detenu, namely petitioner's son i.e., Jegan son of Achuthan aged about 36 years now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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4. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 14.05.2023 bearing reference in P.D.No.28 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Kulasekaram Police Station, is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

6. 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



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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.

7. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.53 of 2023 on the file of Kulasekaram Police Station, for alleged offences under Sections 294(b), 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 23.03.2023 but the impugned preventive detention order has been made only on 14.05.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise.

10. 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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11. 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.

12. To be noted, the first adverse case is in Crime No.434 of 2021 on the file of Kulasekaram Police Station for alleged offences under Sections 457 and 380 of IPC [alleged occurrence on 03.12.2021], second adverse case is Crime No.07 of 2023 on the file of Kulasekaram Police Station for alleged offences under Sections 457 and 380 of IPC [alleged occurrence on 16.01.2023], third adverse case is Crime No.35 of 2023 on the file of Kulasekaram Police Station for alleged offences under Sections 457 and 380 of IPC [alleged occurrence on 02.03.2023]; fourth adverse case is Crime No.40 of 2023 on the file of Kulasekaram Police



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Station for alleged offences under Section 379 of IPC [alleged occurrence on 06.03.2023], ground case is Crime No.53 of 2023 on the file of Kulasekaram Police Station, for alleged offences under Sections 294(b), 397 and 506(ii) of IPC [alleged occurrence on 22.03.2023]. There are four adverse cases. One of the year 2021 and therefore that pales into insignificance or in other words, that has become stale as regards the impugned preventive detention order is concerned. The other three adverse cases are of the year 2023 but there is no disputation or contestation before us that arrest of the detenu on 22.03.2023 was in adverse cases 2, 3 and 4 and the ground case. Therefore, we are convinced that time consumed remains unexplained owing to which the live and proximate link between grounds of detention and purpose of detention has snapped in the case on hand.

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

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.05.2023 bearing reference in P.D.No. 28 of 2023 made by the second respondent is set aside and the detenu



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Thiru.Jegan, aged about 36 years, son of Thiru.Achuthan, 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.)
30.10.2023

Index : Yes
Neutral Citation : Yes
PKN

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
3. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

PKN

ORDER MADE IN
HCP(MD)No.1182 of 2023

DATED : 30.10.2023