



WEB COPY



HCP No.16 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

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

**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.16 of 2023

Ajesh  
S/o.Tajmal Hussain

.. Petitioner

Vs.

1. State of Tamil Nadu  
Rep. by the Additional Secretary,  
Home, Prohibition and Excise Department  
Fort St.George, Chennai-600 009.
2. The Commissioner of Police  
Greater Chennai  
Vepery, Chennai-600 007.
3. The Inspector of Police  
K-2, Ayanavaram Police Station  
Chennai.
4. The Superintendent of Prison  
Central Prison-II  
Puzhal, Chennai-600 066.

..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 relating to the detention order in Memo No.469/BCDFGISSSV/2022 dated 13.12.2022



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passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru.Hussain, son of Ajesh, aged about 30 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's son Thiru.Hussain, son of Ajesh, aged about 30 years, the detenu herein at liberty.

|                 |   |                                                 |
|-----------------|---|-------------------------------------------------|
| For Petitioner  | : | Mr.R.Muthukumar                                 |
| For Respondents | : | Mr.E.Raj Thilak<br>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 father of the detenu assailing a 'preventive detention order dated 13.12.2022 bearing reference No.469/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third 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



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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 no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.413 of 2022 on the file of K-2 Ayanavaram Police Station for alleged offences under Sections 147, 148 and 302 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 factual matrix or be detained further by facts.

4. Mr.R.Muthukumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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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 surrender in the ground case is 08.11.2022 but the impugned preventive detention order has been made only on 13.12.2022.

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



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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.



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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 13.12.2022 bearing reference No.469/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Hussain, male, aged 30 years, son of Thiru.Ajesh, 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.)  
28.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

**P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai-66.**

To

1. State of Tamil Nadu  
Rep. by the Additional Secretary,  
Home, Prohibition and Excise Department  
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2. The Commissioner of Police  
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High Court, Madras.



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

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