



H.C.P.No.39 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

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

H.C.P.NO.39 OF 2023

Suresh Mahapatra

.. Petitioner

Vs.

1.State Rep. By the Secretary to Government
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police / Detaining Authority
Avadi City, Avadi,
Chennai.

3.Inspector of Police
T-1, Ambatore Police Station,
Ambatore, Chennai.

4.The Superintendent
Central Prison
Puzhal, Chennai.

.. Respondents



H.C.P.No.39 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records culminating in the detention of Mr.Suresh Mahapatra Son Nanda Mahapatra under the Act 14 of 1982 vide detention order dated 04.11.2022 on the file of the second respondent herein made in Proceeding Memo No.BCDFGISSSV No.147/2022 and quash the same as illegal and consequently direct the respondent herein to produce the body and person of the said detenu Suresh Mahapatra son of Nanda Mahapatra before this Court and thereafter set him free at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.D.Chandrasekar
For Respondents : Mr.E.Raj Thilak
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 the detenu assailing a 'preventive detention order dated 04.11.2022 bearing reference BCDFGISSSV No.147/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is



H.C.P.No.39 of 2023

the detaining authority as the 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.589 of 2022 on the file of T-1 Ambattur Police Station for alleged offences under Sections 8(c), r/w 20(b)(ii)(C), 25 and 29(i) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' 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.



H.C.P.No.39 of 2023

4.Mr.D.Chandrasekar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor 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 26.08.2022 but the impugned detention order has been made only on 04.11.2022.

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



H.C.P.No.39 of 2023

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 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



H.C.P.No.39 of 2023

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.Learned Public Prosecutor submits that the ground case being C.C.No.186 of 2023 on the file of Judicial Magistrate Court, Ambattur, pertains to commercial quantity of Ganja, charge sheet has been filed within time and the case is proceeding in the Trial Court. Learned Prosecutor points out that Section 37 of NDPS Act will come into play. We make it clear as regards the trial as well as the bail application if any, the learned Trial Court Judge shall deal with the same on its own merits and in accordance with law uninfluenced by this order as this order is only pertaining to a HCP legal drill for testing the impugned preventive detention order, which turns on public order whereas the legal drill in the Trial Court is one that turns on law and order. It is in this context that we deem it appropriate to make this clarification though it is obvious.



H.C.P.No.39 of 2023

10. Before concluding, we also remind ourselves that preventive

detention is not a punishment and HCP is a high prerogative writ.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned

detention order dated 04.11.2022 bearing reference BCDFGISSSV

No.147/2022 made by the second respondent is set aside and the detenu

Thiru Suresh Mahapatra, aged 42 years, son of Thiru. Nanda Mahapatra, 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.)

20.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

TK

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



H.C.P.No.39 of 2023

To
WEB COPY

- 1.The Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police / Detaining Authority
Avadi City, Avadi,
Chennai.
- 3.Inspector of Police
T-1, Ambatore Police Station,
Ambatore, Chennai.
- 4.The Superintendent
Central Prison
Puzhal, Chennai.
- 5.The Public Prosecutor
High Court of Madras.



WEB COPY



H.C.P.No.39 of 2023

M.SUNDAR, J.

AND

R.SAKTHIVEL, J.

TK

H.C.P.NO.39 OF 2023

20.06.2023