



WEB COPY



HCP No.62 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.62 of 2023

Mayilthai

.. Petitioner

-VS-

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,
Vellore District.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Virudampet Police Station,
Vellore District.

Respondents

..

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order of the respondent No.2 in C3/D.O.No.70/2022 dated 30.05.2022 and quash the same and direct



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the respondents to produce the body or person of the detenu by name Dinesh, son of Pandiyan, aged 28 years, now detained as 'Drug Offender' at Salem Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Mohamed Ansar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) has been filed in this Court on 06.01.2023 assailing a 'detention order dated 30.05.2022 bearing reference C3/D.O.No.70/2022' (hereinafter 'impugned detention order' for the sake of brevity, convenience and clarity) made by the 'second respondent/jurisdictional District Collector' (hereinafter 'detaining authority' for the sake of convenience and clarity).

2. Mother of the detenu is the petitioner before us in the captioned HCP. The impugned detention order has been made on the premise that the detenu is a 'Drug Offender' within the meaning of



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definition qua Drug Offender vide Section 2(e) of '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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. Mr.S.Mohamed Ansar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all the respondents are before us. To be noted, fifth respondent is the sponsoring authority.

4. Learned counsel for petitioner, adverting to the impugned detention order, notwithstanding very many averments in the support affidavit focused his campaign against the impugned detention order on two points which find favour with us.

5. The first point which finds favour with us turns on imminent possibility of the detenu being enlarged on bail. This aspect of the matter has been articulated by the detaining authority in the impugned detention order in paragraph 5 of the grounds of detention



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and the most relevant portion of the grounds of detention reads as follows:

'5.....However, information from reliable sources reveals that he is intending to file a bail petition through his relatives. As bails are being granted by courts in such cases, there is most likely that of his (Thiru.Dinesh) coming out on bail by filing any bail application before the any court.'

6. Learned counsel for petitioner points out that no statement under Section 161 of 'Criminal Procedure Code, 1973' ('Cr.P.C' for brevity) has been obtained from the relatives of the detenu. Be that as it may, there is yet another point which has been exhorted by learned counsel for petitioner as alluded to supra and that is live and proximate link between the grounds of detention and the purpose of detention having snapped. In the case on hand, the detenu was incarcerated on 07.04.2022 in the ground case but the impugned detention order has been made only on 30.05.2022 after a lapse of about 54 days. It is not the number of days after which the detention order has been made but it is whether the live and proximate link between the grounds of detention and purpose of detention has snapped. In this regard, we remind ourselves of the



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principle laid down by Honourable Supreme Court in **Banik** case i.e., **Sushanta Kumar Banik Vs. State of Tripura & others** reported in **2022 LiveLaw (SC) 813 : 2022 SCC Online SC 1333**. In *Banik* case, the matter arose under 'PIT NDPS Act' ('Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988') and the Honourable Supreme Court has held that this point has to be considered on a case to case basis. Honourable Supreme Court with regard to the point of live and proximate link snapping held that such point has to be examined on a case to case basis. Honourable Supreme Court also held that this point has two facets. One facet is unreasonable delay and the other facet is unexplained delay.

7. In the light of *Banik* principle, we examined the case on hand on the basis of factual matrix before us. We find that there is no reason for the delay of 54 days in making the impugned detention order. Sequitur is live and proximate link between the grounds of detention and purposes of detention has snapped. In other words, the ground case has become stale. Further sequitur is, this may well fall under the latter category i.e., unexplained delay. The ground case having become stale is a buttressing factor qua the point that live and proximate link has snapped. As both points exhorted by learned



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counsel for petitioner find favour with us, we have no hesitation in holding that the impugned detention order is liable to be set aside.

8. Apropos, the sequitur is, the impugned detention order dated 30.05.2022 bearing C3/D.O.No.70/2022 is set aside and detenu Dinesh, son of Pandiyan, aged 28 years, is directed to be set at liberty forthwith, if not required in connection with any other case.

Captioned HCP is allowed on above terms.

(M.S., J.) (M.N.K., J.)
15.02.2023

Index:Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,



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Vellore District.

4.The Superintendent of Prison,
Central Prison, Salem.

5.The Inspector of Police,
Virudampet Police Station,
Vellore District.

6.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

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