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HCP No.144 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.144 of 2023

Devi

W/o.Manikandan

.. Petitioner

Vs.

- 1 The Government of Tamil Nadu,
Rep by its Secretary, Home, Prohibition
And Excise (XVI) Department,
Fort St. George, Chennai - 600 009.
 - 2 The District Collector and District Magistrate,
Office of District Collector,
Villupuram District, Villupuram.
 - 3 The Superintendent of Police,
Villupuram District, Villupuram.
 - 4 The Superintendent
Central Prison, Cuddalore District.
 - 5 The Inspector of Police
PEW-Villupuram Police Station,
Villupuram District, Villupuram.
- ..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in detention order RC.No.C2/41083/2022 dated 28.12.2022 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's husband M.Manikandan aged about 32 years, the detenu now confined in Central Prison Cuddalore before this Honble Court and set him at Liberty.

For Petitioner	:	Mr.P.Muthamizh Selvakumar representing Mr.K.Kannan
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 01.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.01.2023 inter alia assailing a detention order dated 28.12.2022 bearing reference RC.No.C2/41083/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.



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2. *Wife of the detenu is the petitioner.*

3. *Mr.K.Kannan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa), 4(1-A) and 14A of Tamil Nadu Prohibition Act, 1937 read with Section 120B of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.663 of 2022 on the file of Villupuram Prohibition Enforcement Wing and subsequently altered to Sections 4(1)(aaa), 4(1-A) and 14A of Tamil Nadu Prohibition Act, 1937.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].*

5. *The detention order has been assailed inter alia on the ground that the representation sent by the detenu after detention has not been considered so far.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

7. *Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*



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2. The aforementioned order made in the 01.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.663 of 2022 on the file of Villupuram Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1-A) and 14A of TNP Act read with 120B of IPC. 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.P.Muthamizh Selvakumar, learned counsel representing the 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'



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between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 25.11.2022 but the impugned preventive detention order has been made only on 28.12.2022.

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 of detention snapping' point should be examined on a case to case basis.



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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 28.12.2022 bearing reference Rc.No.C2/41083/2022 made by the second respondent is set aside and the detenu Thiru.Manikandan, male, aged 32 years, son of Thiru.Mani 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.)
03.07.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

- 1 The Government of Tamil Nadu,
Rep by its Secretary, Home, Prohibition
And Excise (XVI) Department,
Fort St. George, Chennai - 600 009.
- 2 The District Collector and District Magistrate,
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PEW-Villupuram Police Station,
Villupuram District, Villupuram.
6 The Public Prosecutor
High Court, Madras.

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

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