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H.C.P.No.182 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.182 of 2023

Pachiyammal

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai, Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
F1 Chintadripet Police Station
(Law and Order), Chennai.

.. 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 in connection with the order of detention passed by the second respondent dated 01.11.2022 in No.399/BCDFGISSSV/2022, the petitioner's son detenu Ajith, male, 22 years, son of Govindaraj, who is confined in Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.



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H.C.P.No.182 of 2023

For Petitioner : Mr.C.Ganesh Pandian
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 07.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 24.01.2023 inter alia assailing a 'detention order dated 01.11.2022 bearing BCDFGISSSV No.399/2022' (hereinafter 'impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. *Mr.C.Ganesh Pandian, 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 Section 8(c) r/w 22(b), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.199 of 2022 on the file of F-1 Chintadripet Police Station.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous*



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H.C.P.No.182 of 2023

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 impugned detention order has been assailed inter alia on the grounds that the arrest intimation was sent through SMS to the petitioner and the similar case relied upon by the detaining authority is not really similar.*

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.'*

2. The aforementioned order made in the 07.02.2023 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. The ground case which is the sole substratum of the impugned detention order is Crime No.199 of 2022 on the file of F-1 Chintadripet Police Station for the alleged offence under Section 8 (c) r/w 22(b), 25, 29(1) of NDPS Act. Owing to the nature of the challenge to the impugned detention



H.C.P.No.182 of 2023

order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.C.Ganesh Pandian, 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 remand in the ground case is 04.08.2022 but the impugned detention order has been made only on 01.11.2022.

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 for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public Prosecutor is unacceptable.

7. We remind ourselves of **Sushanta Kumar Banik's** case



H.C.P.No.182 of 2023

[**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 the proposal by the 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 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.182 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. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.11.2022 bearing reference BCDFGISSSV No.399/2022 made by the second respondent is set aside and the detenu Thiru.Ajith, aged 22 years, son of Thiru.Govindaraj, 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.)
26.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



H.C.P.No.182 of 2023

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
F1 Chintadripet Police Station
(Law and Order), Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

**M.SUNDAR, J.,
and**



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H.C.P.No.182 of 2023

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H.C.P.No.182 of 2023

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