



H.C.P.No.309 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.309 of 2023

Kutty

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
G-6 K.M.C. Incharge S7 Madipakkam Police Station,
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 22.06.2022 in Memo No.164/BCDFGISSSV/2022 against the petitioner's sister son Murugan @ Suruttai Murugan, male, aged 34 years, S/o.Kanniappan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the

Page Nos.1/9



H.C.P.No.309 of 2023

respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Ms.M.Kokila
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity).

2. When the captioned HCP was listed in the Admission Board, this Court vide order dated 01.03.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 01.03.2023 is as follows:



H.C.P.No.309 of 2023

WEB COPY

H.C.P.No.309 of 2023

H.C.P.No.309 of 2023

M.SUNDAR, J

and

M.NIRMAL KUMAR, J

(The Order of the Court was made by M.Sundar, J)

Captioned Habeas Corpus Petition (for brevity, 'HCP') has been filed in this Court on 15.02.2023 *inter-alia* assailing a detention order dated 22.06.2022 bearing Reference Number in No.BCDFGISSSV No.164 of 2022 made by the 'second respondent' (hereinafter called as 'Detaining Authority' for the sake of convenience and clarity). To be noted, fourth respondent is the Sponsoring Authority.

2. The aunt of the detenu is the petitioner.

3. Mr.S.Senthilvel, learned counsel on record for habeas corpus petitioner, is before us. Learned counsel for the petitioner submits that the ground case *qua* the detenu, is for the alleged offences under Sections 341, 294(b), 397, 427, 336 and 506 (Part-II) of the Indian Penal Code (for brevity, 'IPC') in Crime No.226 of 2002 on the file of the S-7 Madipakkam Police Station, Chennai.

Page No.1/3



H.C.P.No.309 of 2023

WEB COPY

H.C.P.No.309 of 2023

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) 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 called as Act 14 of 1982 for the sake of convenience and clarity).

5. The detention order has been assailed *inter-alia* on the ground that there is delay in passing the detention order, as the occurrence took place on 16.05.2022, he was arrested and remanded on the very same day, i.e. on 16.05.2022, but the detention order was passed on 22.06.2022.

6. *Prima-facie* case made out for admission of the HCP. Accordingly, Admit, Issue Rule Nisi, Call for records, returnable in four weeks.

7. Mr.R.Muniyappa Raj, learned Additional Public Prosecutor, State of Tamil Nadu, High Court, Madras, accepts notice for all the respondents.

8. List the captioned HCP accordingly.


(M.S., J) (M.N.K., J)
01.03.2023

es

Page No.2/3



H.C.P.No.309 of 2023

WEB COPY

3. The aforementioned proceedings made at the time of admission captures the factual matrix in a nut shell and therefore the aforementioned proceedings shall be read as an integral part and parcel of this order. To be noted the 'detention order dated 22.06.2022 bearing reference Memo No.164/BCDFGISSSV/2022' made by the detaining authority shall be referred to as 'impugned detention order' for the sake of convenience and clarity.

4. Adverting to and elaborating on the point raised at the time of admission (captured in paragraph 5 of the admission proceedings), Ms.M.Kokila, learned counsel for petitioner submitted 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 16.05.2022 but the impugned detention order has been made only on 22.06.2022.

5. Mr.R.Muniyapparaj, 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

Page Nos.5/9



H.C.P.No.309 of 2023

that this explanation of learned State Additional Public Prosecutor is unacceptable.

6. 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 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 the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

7. To be noted, **Banik** case has been respectfully followed by this Bench in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being



H.C.P.No.309 of 2023

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** and a series of other HCP matters.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.06.2022 bearing reference Memo No.164/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Murugan @ Suruttai Murugan, male, aged 34 years, son of Thiru.Kanniappan 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.) (M.N.K.,J.)
15.03.2023

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

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

Page Nos.7/9



H.C.P.No.309 of 2023

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
G-6 K.M.C. Incharge S7 Madipakkam Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.309 of 2023

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

mmi

H.C.P.No.309 of 2023

15.03.2023

Page Nos.9/9