



H.C.P.No.322 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.322 of 2023

Hameethabanu
W/o.Nazar (Detenu)

..Petitioner /
Wife of detenu

Vs.

1. State of Tamilnadu
Rep. By the Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai
4. State rep. By Inspector of Police
B1 North Beach Police Station
Chennai

... 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 of the 2nd respondent pertaining to the order made in No.301/BCDFGISSSV/2022 dated 16.09.2022 detaining the detenu under the Tamilnadu Act 14 /1982 as a Drug Offender and quash the same and direct the respondents to produce the detenu, namely Nazar, son of Vaisool Karunai, aged 52 years who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Raj

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.M.Sylvester John
Advocate

ORDER

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

When the matter came up for admission on 13.03.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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

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

Ms.S.Valamathi, learned counsel on record for petitioner is before us. Adverting to earlier proceedings made in the listing on 02.03.2023, learned counsel submits that there is no provision of law which stipulates 30 days as the time frame within which the detention order has to be made i.e., 30 days from the date of arrest. Learned counsel expresses regret for making a representation to the contrary.

2. Be that as it may, as regards 06.03.2023 and 07.03.2023 proceedings, learned counsel accepts that there was no representation and learned counsel expresses regret for missing the matter and also seeks an apology on behalf of her senior Mr.J.Franklin for having asserted that he represented the matter on 07.03.2023.

3. Captioned Habeas Corpus Petition has been filed in this Court on 23.02.2023 *inter alia* assailing a detention order dated 16.09.2022 bearing reference No 301/BCDI-GISSSV/2022 made by 'second



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respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

4. Wife of the detenu is the petitioner.

5. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 9(A) read with Section 22(e), 25A of NDPS Act, 1985 in Crime No.190 of 2022 on the file of BI, North Beach Police Station Chennai.

6. 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 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].

7. The detention order has been assailed *inter alia* on the ground that there is non-application of mind on the part of the detaining authority in arriving at the subjective satisfaction that there is a real possibility of detenu coming out on bail when no bail application was moved by the detenu.

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

9. Mr.S.Raja Kumar, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

2.Mr.S.Raj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, for all respondents are before us.

3. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as petitioner was arrested on 01.06.2022 but the impugned detention order has been made only on 16.09.2022.



4. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

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



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6. 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.

7. We are also informed without any disputation by both sides that co-accused in the ground case was also clamped with an identical preventive detention order and co-accused assailed the same vide H.C.P.No.1999 of 2022 and this HCP was allowed in and by an order dated 28.03.2023 by this Bench on the same point.



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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 16.09.2022 bearing reference 301/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Nazar, aged 52 years, son of Thiru.Vaisool Karunai 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.)

(D.N.R.,J.)

06.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai
4. The Inspector of Police
B1 North Beach Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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and
Dr.D.NAGARJUN, J.,

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