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H.C.P.No.347 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

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

H.C.P.NO.347 OF 2023

K.Sangeetha

.. Petitioner

VS

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.

2.The District Collector and
District Magistrate
Villupuram District,
Villupuram.

3.The Superintendent of Prison
Central Prison – Cuddalore,
Cuddalore.

4.The Superintendent of Police
Villupuram, Villupuram District.

5.State Rep. By its
The Inspector of Police
PEW – Tindivanam Police Station
Villupuram District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 05.01.2023 on the file of the second respondent herein made in proceedings Memo Rc.No.C2/1105/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Kajaraj S/o. Seetharaman, aged 34 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner : Mr.Magendiraverman
for Mr.R.Sasikumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 05.01.2023 bearing reference Rc.No.C2/1105/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



H.C.P.No.347 of 2023

2. Impugned preventive detention order has been made under

'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] on the premise that the detenu is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.405 of 2022 on the file of Tindivanam Prohibition Enforcement Wing for alleged offences initially registered under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 and subsequently altered into Sections 4(1)(aaa), 4(1-A) and 14A of Tamil Nadu Prohibition Act, 1937 read with Rule 7 of Tamil Nadu Rectified Spirit Rules, 2000. 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.



H.C.P.No.347 of 2023

4.Mr.Magendiraverman, learned counsel representing

Mr.R.Sasikumar, learned 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 07.12.2022 but the impugned detention order has been made only on 05.01.2023.

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 [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***]. To be noted, ***Banik***



H.C.P.No.347 of 2023

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 Citation of Madras High Court being **2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others**



H.C.P.No.347 of 2023

reported vide Neutral Citation of Madras High Court being

2023:MHC:1159 and a series of other orders in HCP cases.

9.To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.405 of 2022 on the file of Tindivanam Prohibition Enforcement Wing for alleged offences *interalia* initially registered under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 and subsequently altered into Sections 4(1)(aaa), 4(1-A) and 14A of Tamil Nadu Prohibition Act, 1937 read with Rule 7 of Tamil Nadu Rectified Spirit Rules, 2000.

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

11.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.01.2023 bearing reference Rc.No.C2/1105/2023 made by the second respondent is set aside and the detenu Thiru. Kajaraj, aged 34 years, son of Thiru. Seetharaman, is



H.C.P.No.347 of 2023

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.)

17.07.2023

Index : Yes/No

Neutral Citation : Yes

TK

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

To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George, Chennai – 600 009.
- 2.The District Collector and
District Magistrate
Villupuram District, Villupuram.
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- 6.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.347 of 2023

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H.C.P.NO.347 OF 2023

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