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H.C.P.No.516 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.516 of 2023

Baiju

.. Petitioner

VS

- 1.The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Superintendent of Police,
Tiruvallur District.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 5.The Inspector of Police,
SIPCOT Police Station,
Tiruvallur District.

.. 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 relating to the detention order passed by the second
respondent pertaining to the order made in BCDFGISSSV



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No.60/2022 dated 05.12.2022 in detain the detenu under 2(e) of Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondent to produce the detenu Baiju, son of Taitas, aged about 41 years, who is detained at Central Prison II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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 05.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.03.2023 inter alia assailing a detention order dated 05.12.2022 bearing Reference BCDFGISSSV No.60/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Detenu is the petitioner.

3. Mr.G.Nirmal Krishnan, 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 8(c), 20(b)(ii)(C), 25, 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 read with 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter



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'IPC' for the sake of convenience and clarity] in Crime No.173 of 2022 on the file of SIPCOT 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 Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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 grounds that the arrest of the detenu has not been intimated to the family members of the detenu and the remand order has not been properly translated in Tamil.

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 05.04.2023 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 preventive detention order is Crime No.173 of 2022 on the file of SIPCOT Police Station for the alleged offences under Sections 8(c), 20(b)(ii)(C), 25, 29(1) of NDPS Act r/w 328 IPC. Owing to the nature of the challenge to the impugned



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

4. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the Admission Board, campaign against impugned preventive detention order was predicated on the points that arrest of the detenu has not been intimated to the family members of the detenu and the remand order has not been properly translated in Tamil. To be noted, it is captured in paragraph 5 of the Admission Board order dated 05.04.2023. Be that as it may, in the Final Hearing Board today, 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 17.09.2022 but the impugned detention order has been made only on 05.12.2022.

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 for the same. Considering the facts and



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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** 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



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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. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.173 of 2022 on the file of SIPCOT Police Station for alleged offences inter-alia under Sections 8(c), 20(b)(ii)(C), 25, 29(1) of NDPS Act r/w 328 IPC.

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



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detention order dated 05.12.2022 bearing reference BCDFGISSSV No.60/2022 made by the second respondent is set aside and the detenu Thiru.Baiju, aged 41 years, son of Thiru.Taitas, 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.)
04.07.2023

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 II, Puzhal, Chennai - 66.

To

- 1.The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Superintendent of Police,
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- 6.The Public Prosecutor,
High Court, Madras.



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

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