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HCP No.949 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.949 of 2022

Vanitha

W/o.Vengadesh @ Vengadajalapathi

..

Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Prohibition & Excise Department (Home)
Fort St. George
Chennai – 600 009
2. The District Collector and District Magistrate
Nagapattinam District
Nagapattinam
3. The Superintendent of Police
Nagapattinam
Nagapattinam District
4. The Superintendent of Prison
Central Prison
Thiruchirappalli

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5. The Inspector of Police
All Women Police Station
Nagapattinam
Nagapattinam 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 pertaining to the detention order dated 21.04.2022 in C.O.C.No.22/2022 passed by the 2nd respondent and issue direction to produce the body of the detinue namely Thiru.Vengadesh @ Vengadajalapathi, aged 35 years, son of Ramani presently confined at Central Prison, Thiruchirapalli before this Court and set him at liberty forthwith and quash the same.

For Petitioner	:	Mr.C.Venkatesan for Mr.R.Muruga Bharathi
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP'] has been filed assailing a detention order dated 21.04.2022 bearing reference C.O.C.No.22 of 2022 made by the 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].

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2. The impugned detention order has been made on the premise that the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) 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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. It is not necessary to dilate more on facts as the captioned HCP turns on one short point and that one short point is, 'live and proximate link between grounds and purpose of detention having snapped'. In the case on hand, the detenu was arrested in the ground case on 01.03.2022 but the impugned detention order has been made only on 21.04.2022 (51 days later). Learned counsel for petitioner submits that this has been raised as ground (E) in the affidavit, which reads as follows:

'E. It is pertain to note that the detenue was arrested by the 5th respondent on 01.03.2022 and remanded to the judicial custody on the same day but the detention order was passed against the detenue is only on 21.04.2022 i.e., after lapse of 20 days. But while passing the detention order the detaining authority has not verified the same and detained the detenue in a mechanical manner.'



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4. The response of the State to the aforementioned Ground (E) is in paragraph 4 of the counter affidavit which reads as follows:

'4. It is respectfully submitted that the averment of the petitioner herein in grounds 'E' of the affidavit is denied as false since the Detention Order had been passed within the provisions of the law contained in the T.N.Act.14/1982. The averment of the petitioner is incorrect and devoid of merit.'

5. A bare perusal of paragraph 4 of the counter affidavit leaves us with the considered view that the live and proximate link snapping point has not been answered by the State in the counter affidavit. However, learned Additional Public Prosecutor, on instructions, submits that DNA report had to be obtained, that consumed substantial time and that has caused the delay in making the impugned detention order.

6. A recent case law as regards live and proximate link between grounds and purpose of detention snapping is ***Sushanta Kumar Banik*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in ***2022 LiveLaw (SC) 813***]. To be noted, ***Sushanta Kumar Banik*** case arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tripura. In



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Sushanta Kumar Banik case, Hon'ble Supreme Court held that this point has to be dealt with on a case to case basis. In **Banik's** case it also comes to light that there are two facets to this argument. One facet is, 'unreasonable delay' and the other facet is 'unexplained delay'. In the case on hand, we have no difficulty in saying that the same falls under the latter category. The reason is, paragraph 4 of the counter affidavit does not explain the delay though specifically raised by the petitioner. The reason articulated by the learned Additional Public Prosecutor is not acceptable as it at best turns on time consumed for making the charge sheet and not for making the impugned detention order as preventive detention is not a punishment and habeas corpus is a high prerogative writ. As the live and proximate link between grounds of detention and purpose of detention snapping point finds favour with us, we have no difficulty in allowing the captioned HCP.

7. Ergo, Captioned HCP is allowed and impugned detention order dated 21.04.2022 bearing reference C.O.C.No.22 of 2022 made by the second respondent is set aside and detenu Mr.Vengadesh @ Vengadajalpathi, male, aged 35 years, son of Mr.Ramani, now detained in Central Prison, Thiruchirappalli, is directed to be set at liberty forthwith



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unless required in connection with any other case/s.

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(M.S.,J.)

(M.N.K.,J.)

13.02.2023

Index: Yes

Neutral Citation : Yes

gpa

P.S: Registry to forthwith communicate this order to jail authorities in Central Prison, Thiruchirappalli



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To

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6. The Public Prosecutor
Madras High Court



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