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HCP No.1323 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.1323 of 2022

Sowmiya

W/o.Satheshkumar

... Petitioner(wife of detenu)

-VS-

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Home, Prohibition & Excise
Fort St. George, Chennai – 600 009.

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

3.The Superintendent of Police,
Dharmapuri District, Dharmapuri.

4.The Superintendent of Police,
Central Prison, Salem

5.The Inspector of Police,
B1 Dharmapuri Police Station,
Dharmapuri District.

... Respondents



HCP No.1323 of 2022

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records made in S.C.No.18 of 2022 dated 28.06.2022 on the file of the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Satheshkumar, Son of Devaraj, 37 years now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner .. Mr.R.Sankarasubbu

For Respondents .. Mr.R.Muniyapparaj
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 in this Court on 06.07.2022 assailing an order of detention dated 28.06.2022 bearing reference S.C.No.18 of 2022 [hereinafter referred as 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., jurisdictional District Collector [hereinafter referred as 'detaining authority' for the sake of convenience and clarity]. To be noted the fifth respondent who is the jurisdictional Inspector of Police is the Sponsoring authority.



HCP No.1323 of 2022

WEB COPY

2.The impugned detention order has been made by the detaining authority on the premise that the detenu is a Goonda within the meaning of Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience]. One case in Crime No.347 of 2022 on the file of Dharmपुरi Police Station for alleged offences qua Sections 419, 420, 312 of Indian Penal Code [IPC] and 15(3) of Indian Medical Council Act, 1956 is the ground case and this is the solitary substratum of the detention order.

3.Mr.R.Sankarasubbu, learned counsel for petitioner [to be noted wife of the detenu is the petitioner before us] submits that a careful perusal of the detention order brings to light that the entire matter is anchored on alleged violation of 'Pre-Conception and Pre-Natal Diagnostic Techniques [Prohibition of Sex Selection Act, 1994] Act' [hereinafter referred as



HCP No.1323 of 2022

'PCPNDT Act'] by as many as eight persons. Learned counsel goes on to submit that the detention order itself says that the act of all the eight persons are punishable under PCPNDT Act but the detenu alone has been singled out for clamping preventive detention.

4.We are informed by the learned Additional Public Prosecutor that in the aforementioned solitary ground case, charge sheet has been filed in the Court of Judicial Magistrate No.I, Dharmapuri. We are also informed that the charge sheet is yet to be taken on file.

5.In response to this argument, learned Additional Public Prosecutor submits that the detenu has played an important role in the alleged offence. We are unable to agree as even according to the detention order after setting out the alleged offence, the detaining authority has held as follows:

'.....According to the PCPNDT [Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the acts of the above persons are punishable offences under this Act.'



HCP No.1323 of 2022

6. There is another facet of the matter. Another portion of the detention order reads as follows:

'.....At that time, the eight people, who came to know the names and addresses of people who were at home near Rajapettai Lake, Karpagam, Vijayakumar, Kumar, Saridha, Venkatesan of Dharmapuri and Satheshkumar, Jothi and Sudhakar of Tirupathur, were in that house. At that time, she was enquired Karpagam. She stated that she was residing at Alagapuri, in Dharmapuri along with her husband Vijayakumar and two children. She studied Diploma in Nursing and worked as a Nurse at Salem and Subha Hospital in Dharmapuri, until 2016. When she was with the doctor, she know whether it was a male or female gender when she was with Doctor doing the scan for the pregnant women. After that, she did not go to work there, when staying at the home, she became acquainted with Satheshkumar, Jothi, Sudhakar of Tirupathur, through Sarasvathi of Dharmapuri. The said Satheshkumar was already in Tirupathur through Jothi and Sudhakar, who were making money by deceiving pregnant women, by claiming that they were Doctors and giving birth to their unborn baby male or female, with the held of an ultrasound scan machine.'

After setting out the aforementioned aspect of the matter, the detaining



HCP No.1323 of 2022

authority has observed that all of them have committed offences which are punishable under PCPNDT Act [to be noted this portion has already been extracted and reproduced supra]. Therefore, in addition to the detenu being singled out, there is also no material to demonstrate that the remaining seven persons could not have continued to penetrate the said offence without the aid of the detenu. We are also informed that the remaining seven have been enlarged on bail. This buttresses the proposition. To be noted the fact that the other seven have been enlarged on bail is not subjected to any dispute or contestation. It is a factual position. Therefore, we are convinced that the clamping of the detention order against one out of eight is untenable. We have to decide the matter on material available before us in the case file. Therefore, we make it clear that in arriving at this conclusion we are not saying that impugned detention order is hit by malafides but we are saying it is hit by non-application of mind.

7. There is another point that is raised by learned counsel for petitioner and that pertains to delay in making the detention order. The delay in making the detention order when put in legal parlance would read as 'snapping of live



HCP No.1323 of 2022

and proximate link between the grounds and purpose of detention'. As regards this proposition of snapping of live and proximate link between grounds and purpose of detention, we draw inspiration from ***Sushanta Kumar Banik vs. State of Tirupura and others*** case rendered by the Hon'ble Supreme Court on 30.09.2022 reported in ***2022 LiveLaw (SC) 813 [2022 SCC Online SC 1333]***. Before we advert to Banik's case, in the case on hand there is no dispute that the detenu was incarcerated on 28.05.2022 and the impugned detention order was made by the second respondent on 28.06.2022. The delay ground has been raised very tersely by the petitioner in sub-paragraph (xi) of paragraph 2 of the support affidavit and the same reads as follows:

'(xi) The delay in passing the detention order vitiates the detenu.'

8.The aforementioned ground has been met by State in the counter affidavit in paragraph 15 and the same reads as follows:

'15.I humbly submit that the averments made in the ground (11) of the affidavit, it is submitted that attack of the detention on the delay and latches is unfound, as there was



HCP No.1323 of 2022

absolutely neither delay nor latches.'

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9. We now revert to Banik's case. Banik's case is one that arose under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ('PIT NDPS Act'). In Banik's case after examining the proposal by the Sponsoring authority, the trajectory the matter took and the time that has been consumed between the proposal and the actual detention order, the Hon'ble Supreme Court elucidatively articulated the position with regard to live and proximate link. The relevant paragraph is paragraph 20 in Live Law Report and paragraph 22 in SCC Online report which reads as follows:

'22. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded



HCP No.1323 of 2022

any finding on the same.'

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10.The articulation in aforementioned paragraph is eloquent, elucidative and instructive. The point is 'proximate and live link' between the grounds of detention and purpose of detention snapping should be examined on a case to case basis. The further point is, in examining on a case to case basis, there are two facets to snapping of live and proximate link. One facet is delay being unreasonable and the other facet is delay being unexplained. We now examine the case on hand on facts. From the grounds raised in the support affidavit by the petitioner and the stated position of the respondents as set out in paragraph 15 of the counter affidavit, we have no hesitation in coming to the conclusion that the case on hand fits into the second facet, namely, unexplained delay, as the delay has not been explained. In this regard, we remind ourselves that we have repeatedly held that no time limit in terms of numeric expression has been set out in Act 14 of 1982 for making of a detention order qua arrest. Illustratively speaking, constitutional safeguard ingrained in Article 22(5) of the Constitution of India has been numerically expressed and capped in Section 8(1) of Act 14 of 1982 as five days but



HCP No.1323 of 2022

nothing of that kind has been done with regard to the number of days within which a detention order has to be made qua ground case. Therefore, we respectfully follow the Hon'ble Supreme Court ratio and deal with the case on hand on facts of instant case [case to case basis] and we have set out our dispositive reasoning supra.

11.Learned counsel for petitioner referred to the celebrated *A.K.Gopalan vs. The District Magistrate, Malabar and another* reported in *1949 Cri.L.J. 843* but it may not be necessary to advert to the same in the case on hand as we have found that two grounds of attack which the protagonist of the captioned HCP has projected before us is acceptable and good enough for interfering with the detention order. To put it differently, as petitioner succeeds in his campaign against impugned detention order on aforementioned two points it is not necessary to delve into the matter any further.

12.Apropos, the sequitur is, captioned HCP is allowed and the detention order dated 28.06.2022 bearing reference S.C.No.18 of 2022 is set



HCP No.1323 of 2022

aside and the detenu Satheshkumar, aged 37 years, son of Devaraj is directed
to set at liberty forthwith unless required in connection with any other case.

There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
30.01.2023

Index:Yes

Neutral Citation : Yes

cse

Note: The Registry to forthwith communicate
this order to Jail authorities in Central Prison, Salem.

To

1. The Secretary,
Department of Home, Prohibition & Excise
Fort St. George, Chennai – 600 009.
- 2.The District Collector and
District Magistrate,
Dharmapuri District, Dharmapuri.
- 3.The Superintendent of Police,
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WEB COPY



HCP No.1323 of 2022

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

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H.C.P.No.1323 of 2022

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