



WEB COPY



H.C.P.No.1316 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1316 of 2022

Pappa .. Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.

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

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

4.The Superintendent of Prison,
Central Prison, Salem,
Salem District.

5.State rep. By its
The Inspector of Police,
Karumandurai Police Station,
Salem 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 entire
records relating to the petitioner's husband detention under Tamil

Page Nos.1/8



H.C.P.No.1316 of 2022

Nadu Act 14 of 1982 vide detention order dated 27.06.2022 on the file of the second respondent herein made in proceedings C.M.P.No.17/Drug Offender/C2/2022 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Ramalingam, S/o.Theerthan, aged 65 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Salem.

For Petitioner : Mr.W.Camyles Gandhi
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 detenu assailing a 'preventive detention order dated 27.06.2022 bearing reference C.M.P.No.17/Drug Offender/C2/2022' [hereinafter 'impugned 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 detention order has been made by second respondent.



H.C.P.No.1316 of 2022

WEB COPY

2. Impugned 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.35 of 2022 on the file of Karumandurai Police Station for alleged offences under Sections 8(c) and 22 (c) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' (hereinafter 'NDPS Act' for the sake of convenience and clarity) and Section 25 of Juvenile Justice (Care and Protection of Children) Act, 2015. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



H.C.P.No.1316 of 2022

WEB COPY

4. Mr.W.Camyles Gandhi, learned counsel 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 01.04.2022 but the impugned detention order has been made only on 27.06.2022.

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 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***



H.C.P.No.1316 of 2022

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 this Bench in **Gomathi Vs.The Principal Secretary to Government and others** reported in **2023/MHC/334**, **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported in **2023/MHC/733** and series of other HCP matters.



H.C.P.No.1316 of 2022

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.06.2022 bearing reference C.M.P.No.17/Drug Offender/C2/2022 made by the second respondent is set aside and the detenu Thiru.Ramalingam, male, aged 65 years, son of Thiru.Theerthan 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.) (M.N.K.,J.)
13.03.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.
- 2.The District Magistrate and District Collector,
Salem District, Salem.

Page Nos.6/8



H.C.P.No.1316 of 2022

WEB COPY

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

4.The Superintendent of Prison,
Central Prison, Salem,
Salem District.

5.The Inspector of Police,
Karumandurai Police Station,
Salem District.

6.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1316 of 2022

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

mmi

H.C.P.No.1316 of 2022

13.03.2023

Page Nos.8/8