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H.C.P.No.1371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

Coram

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

H.C.P.Nos.1371, 1373 and 1387 of 2022

H.C.P.No.1371 of 2022

Valarmathi

... Petitioner/ wife of detenu

-VS-

1. The State of Tamil Nadu
represented by
The Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, Fort St. George
Chennai
2. The District Collector/District Magistrate
Kanchipuram District
Kanchipuram
3. The Superintendent of Police
Central Prison Puzhal II
Puzhal Chennai
4. The Inspector of Police
Sriperumpathur Police Station
Kancheepuram District

... Respondents



H.C.P.No.1371 of 2022

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in R.C.No.10738/2022/M6-D.O.No.27 of 2022 passed by the 2nd respondent on 29.06.2022 on the file of the 2nd Respondent and quash the same as illegal and consequently direct the respondent to produce petitioner's husband Vignesh @ Vicky, son of Pushparaj, aged about 24 years before this Court who is now detained in Central Prison, Puzhal II and set him at liberty.

H.C.P.No.1373 of 2022

Rajeswari

... Petitioner/ wife of detenu

-VS-

1. The State of Tamil Nadu
represented by
The Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, Fort St. George
Chennai
2. The District Collector/District Magistrate
Kanchipuram District
Kanchipuram
3. The Superintendent of Police
Central Prison Puzhal II
Puzhal Chennai



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4. The Inspector of Police
Sriperumpathur Police Station
Kancheepuram District

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in R.C.No.10736/2022/M6-D.O.No.26 of 2022 passed by the 2nd respondent on 29.06.2022 on the file of the 2nd Respondent and quash the same as illegal and consequently direct the respondent to produce petitioner's husband Chandrasekar @ Chandru, son of Nagesh aged about 30 years before this Court who is now detained in Central Prison, Puzhal II and set him at liberty.

H.C.P.No.1387 of 2022

Sangeetha

... Petitioner/ wife of detenu

-VS-

1. The State of Tamil Nadu
represented by
The Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, Fort St. George
Chennai
2. The District Collector/District Magistrate
Kanchipuram District
Kanchipuram



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3. The Superintendent of Police
Central Prison Puzhal II
Puzhal Chennai

4. The Inspector of Police
Sriperumpathur Police Station
Kancheepuram District

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in R.C.No.10737/2022/M6-D.O.No.25 of 2022 passed by the 2nd respondent on 29.06.2022 on the file of the 2nd Respondent and quash the same as illegal and consequently direct the respondent to produce petitioner's husband Dinesh son of Subramani, aged about 29 years, before this Court who is now detained in Central Prison, Puzhal II and set him at liberty.

For Petitioner .. Mr.A.Elumalai

For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor

COMMON ORDER

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

This common order will govern the captioned three 'Habeas Corpus Petitions' [hereinafter 'HCP' in singular and 'HCPs' in plural for the sake of brevity].



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2.Mr.A.Elumalai, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for respondents in all the three matters are before us.

3. For the sake of convenience, 'H.C.P.No.1371 of 2022' shall be referred to as 'I HCP', 'H.C.P.No.1373 of 2022' shall be referred to as 'II HCP' and 'H.C.P.No.1387 of 2022' shall be referred to as 'III HCP'.

4. We are informed by both sides without any dispute or contestation that all the three captioned HCPs pertain to three accused in the ground case. In this view of the matter, request for taking up and hearing out all the three HCPs together was acceded to.

5. Suffice to say that the ground case is Crime No.361 of 2022 on the file of the fourth respondent (Sponsoring Authority) for alleged offences under Sections 147, 148, 307 and 120B of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity].



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6. It may not be necessary to dilate further or in other words, it may not be necessary to be detained by facts further as the main point which is alleged is delay in making the detention order. 'Delay in making the detention order' put it in legal parlance is 'snapping of live and proximate link' between grounds of detention and purpose of detention.

7. In the cases on hand, in I HCP, the date of remand is 12.05.2022 and in II and III HCPs, the date of remand is on 05.05.2022. In all three HCPs, the impugned detention orders have been made by 2nd respondent jurisdictional Collector (detaining authority) on 29.06.2022.

8. Learned counsel for petitioner submits that there is 56 days delay in II and III HCPs and 48 days delay in I HCP. As already alluded to supra, the legal point is whether live and proximate link between grounds of detention and purpose of detention has snapped.

9. Learned State Additional Public Prosecutor submitted that the detaining authority had to collect material, collate the same and then make the impugned detention orders.



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10. As regards this point of 'live and proximate link' between grounds of detention and purpose of detention snapping, we draw inspiration from a case law i.e., **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. Hon'ble Supreme Court after noticing the trajectory in that case i.e., proposal from the Sponsoring Authority and time consumed, came to the conclusion that 'live and proximate link' snapping point should be considered on a case to case basis. We considered the cases on hand qua facts and circumstances. We find that there is one adverse case and one ground case, which turn on 307 IPC and inter alia owing to material relied on, we are unable to persuade ourselves to accept the explanation for delay.

11. As regards snapping of live and proximate link between grounds of detention and purpose of detention, Hon'ble Supreme made it clear in **Sushanta Kumar Banik** case that there are two facets to this argument.



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One facet is, unreasonable delay and the other facet is unexplained delay.

We are of the view that the captioned HCPs fall in the latter facet i.e., unexplained delay. We are unable to accept the explanation qua delay considering the facts and circumstances of the case as already alluded to and delineated supra.

12. In the light of the narrative thus far and in view of the obtaining legal position that preventive detention is not a punishment and HCP is a high prerogative writ, we are of the view that the three impugned detention orders, all dated 29.06.2022, bearing reference R.C.No.10738/2022/M6-D.O.No.27 of 2022 (I HCP), R.C.No.10736/2022/M6-D.O.No.26 of 2022 (II HCP) and R.C.No.10737 /2022/M6-D.O.No.25 of 2022 (III HCP) are liable to be set aside and detenus Mr.Vignesh @ Vicky, son of Mr.Pushparaj, aged 24 years, Mr.Chandrasekar @ Chandru, son of Mr.Nagesh, aged 30 years and Mr.Dinesh, son of Mr.Subramani, aged 29 years are directed to be set at liberty forthwith, if not required in connection with any other case/s.



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Captioned HCPs ordered on above terms.

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(M.S,J.) (M.N.K.,J.)
06.02.2023

Index:No

Neutral Citation : Yes

gpa

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

To

1. The Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, Fort St. George
Chennai
2. The District Collector/District Magistrate
Kanchipuram District
Kanchipuram
3. The Superintendent of Police
Central Prison Puzhal II
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4. The Inspector of Police
Sriperumpathur Police Station
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5. . The Public Prosecutor
Madras High Court
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