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H.C.P.No.1391 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

Coram

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

H.C.P.No.1391 of 2022

Anitha Ruby Lawrence
W/o.Lawrence

... Petitioner/ wife of detenu

-VS-

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Secretariat
Chennai – 600 009
2. The District Collector/District Magistrate
Krishnagiri District
Krishnagiri
3. The Superintendent of Police
Krishnagiri District
Krishnagiri
4. The Superintendent of Central Prison
Salem



H.C.P.No.1391 of 2022

5. The Inspector of Police
All Women Police Station
Denkanikottai
Krishnagiri 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 S.C.No.19/2022 on the file of the second respondent, quash the detention order dated 13.06.2022 and produce the detenu Lawrance son of Francis presently detained as a sexual offender at the Central Prison, Salem under the Tamil Nadu Act, 14 of 1982 before this Court and set him at liberty.

For Petitioner .. Mr.A.M.Rahamath Ali

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 15.07.2022 assailing a 'detention order dated 13.06.2022 bearing reference S.C.No.19 of 2022' [hereinafter 'impugned detention order' for the sake of convenience] made by the second respondent i.e., 'jurisdictional District Collector/District Magistrate' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]



H.C.P.No.1391 of 2022

clamping preventive detention qua the detenu 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].

2. To be noted, wife of the detenu is the petitioner before us.

3. Mr.A.M.Rahamath Ali, learned counsel for habeas corpus petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the respondents are before us. It is also to be noted that 5th respondent is the Sponsoring Authority.

4. As regards the ground case, the same is captured in Detention Order in the following manner:

<i>Crime No.</i>	<i>Police Station</i>	<i>Offences</i>
Crime No.09/2022	Denkanikottai All Women Police Station	Sections 9(f), 9(m) r/w. 10 of Protection of Children from Sexual Offences Act, 2012 and Section 506(i) of Indian Penal Code

The above is telltale speaks for itself.



H.C.P.No.1391 of 2022

WEB COPY

5. Owing to the legal perimeter of a habeas corpus writ and in the light of the ground which is urged before this Court i.e., ground on which the impugned detention order is assailed, we deem it appropriate to not to be detained further by facts.

6. The pivotal point that is urged before us is, delay in making the detention order. To put it in legal parlance, the argument is 'live and proximate link' between grounds of detention and purpose of detention has snapped. To support this argument, learned counsel for petitioner pointed out that the detenu was arrested and remanded to judicial custody in the ground case on 28.04.2022 but the impugned detention order has been made only on 13.06.2022, more than 1 ½ months later.

7. In response to the above argument, learned Additional Public Prosecutor submitted that the ground case pertains to alleged offence under 'The Protection of Children from Sexual Offences Act, 2012 (32 of 2012)' [hereinafter 'POCSO Act' for the sake of brevity] and therefore, materials had to be collected and collated before the impugned detention order was



H.C.P.No.1391 of 2022

made.

WEB COPY

8. As regards the grounds and purpose of detention snapping, we remind ourselves of ***Sushanta Kumar*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in ***2022 LiveLaw (SC) 813***]. ***Sushanta Kumar*** case arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PITNDPS Act' for the sake of brevity] in Tripura and taking into account the proposal from the Sponsoring Authority, the trajectory the matter took and time consumed in making the detention order, Hon'ble Supreme Court came to the conclusion that the point of live and proximate link snapping should be examined on case to case basis. Hon'ble Supreme Court held 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, *prima facie* we find that one and half months delay appears to support the submission of learned counsel for petitioner that the live and proximate link had snapped. In other words, ground case has become stale. We also remind ourselves of order of Hon'ble Supreme Court in ***Mallada K Sri Ram Vs. The State of Telangana & Ors.*** [Criminal Appeal No.561 of 2022 arising out of SLP (Crl) No.1788



H.C.P.No.1391 of 2022

of 2022] being order dated 04.04.2022 wherein Hon'ble Supreme Court has held that clamping of detention order on such stale ground cases tantamounts to punishment without trial.

9. In the case on hand, we do not want to delve into whether it is unreasonable delay. Suffice to say that it is unexplained delay as the time consumed remains unexplained. To be noted, the order of judicial remand was on 28.04.2022 and we are now informed that the matter has taken shape in the form of Special S.C.No.18 of 2023 on the file of Special Mahila Court, Krishnagiri. We are informed by learned Additional Public Prosecutor that charge sheet has been filed on 20.07.2022, the same was taken on file and more particularly trial has commenced and the same is underway. We also take note of the fact that this aspect of the matter dims imminent possibility of being enlarged on bail aspect of the matter owing to the rigour of provisions of POCSO Act.

10. In the light of the narrative thus far, we are of the view that impugned detention order dated 13.06.2022 bearing reference S.C.No.19 of 2022 is liable to be set aside and detenu Lawrence, aged 48, son of Thiru.



H.C.P.No.1391 of 2022

Francis is directed to be set at liberty forthwith, if not required in connection with any other case/s.

Captioned HCP ordered on above terms.

(M.S,J.) (M.N.K.,J.)
31.01.2023

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, Salem.



H.C.P.No.1391 of 2022

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Madras High Court
Chennai - 104



WEB COPY



H.C.P.No.1391 of 2022

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H.C.P.No.1391 of 2022

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