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H.C.P.Nos.1392 and 1403 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.Nos.1392 and 1403 of 2022

H.C.P.No.1392 of 2022

Mrs.K.Swetha

Wife of Karthick @ Kulla Karthick

... Petitioner
/ wife of Detenue

-VS-

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Secretariat
Chennai – 600 009

2. The Commissioner of Police
Chennai City

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

4. The Inspector of Police (Law & Order)
H-5, New Washermenpet Police Station
Chennai

... Respondents



H.C.P.Nos.1392 and 1403 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 connection with the order of detention passed by the second respondent dated 15.06.2022 in Memo No.155//BCDFGISSSV/2022 against the petitioner husband Thiru.Karthick @ Kulla Karthick, male about aged 26 years, son of Rajendran who is confined at Central Prison Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

H.C.P.No.1403 of 2022

Mohana Priya

Daughter of Govindaraj

... Petitioner/ Sister of Detenue

-VS-

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Secretariat
Chennai – 600 009
2. The Commissioner of Police
Chennai City
3. The Superintendent of Police
Central Prison-II, Puzhal, Chennai
4. The Inspector of Police (Law & Order)
H-5, New Washermenpet Police Station
Chennai

... Respondents



H.C.P.Nos.1392 and 1403 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 connection with the order of detention passed by the second respondent dated 15.06.2022 in Memo No.156//BCDFGISSSV/2022 against the petitioner brother Thiru.Ramesh @ Rangaraj, male aged 22 years, son of Govindaraj who is confined at Central Prison Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner .. Mr.A.Venkateswara Babu
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 two 'Habeas Corpus Petitions' [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity].

2. Captioned HCPs have been filed assailing two separate orders, both dated 15.06.2022 bearing reference Nos. 155//BCDFGISSSV/2022 (assailed in H.C.P.No.1392 of 2022) and 156//BCDFGISSSV/2022 (assailed in H.C.P.No.1403 of 2022), [hereinafter 'impugned detention



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orders' collectively and 'I impugned detention order' and 'II impugned detention order' respectively wherever there is need to refer to the orders separately for the sake of convenience and clarity].

3.Preventive detention has been clamped qua two detenus vide impugned detention orders *inter alia* on the premise that the detenus are 'Goondas' within the definition of 'Goonda' vide Section 2(f) 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].

4. It may not be necessary to be detained by facts. In other words, it may not be necessary to go into the factual matrix as we are informed by both sides i.e., learned counsel for petitioner in HCPs and learned Additional Public Prosecutor that HCPs filed by the co-accused/co-detenus (3 HCPs) have been allowed by way of three separate orders, all dated 10.01.2023 vide H.C.P.No.1351 of 2022, 1360 of 2022 and 1362 of 2022. The order made by Hon'ble predecessor Bench in H.C.P.No.1362 of 2022



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[E.Jancy Vs. The Secretary to Government and Ors.] has been placed before

us. We find that in the earlier order, the impugned detention orders have been set aside on the ground that the similar case that has been relied on for coming to the conclusion (subjective satisfaction) that there is imminent possibility of the detenus being enlarged on bail are not really similar. In other words, similar case and the ground case are not similar and it is a case of comparing Apples and Oranges. There is no dispute or disagreement that the detention orders in captioned HCPs and the earlier HCPs are similar. This point is available to the detenus/habeas corpus petitioners in the captioned HCPs also. Therefore, this point by itself would enure to the habeas corpus petitioners.

5. However, we notice one more ground and therefore, we deem it appropriate to set out that ground also. This ground is 'live and proximate link' between grounds and purpose of detention having snapped. As regards detention order in I HCP, the date on which the detenu was remanded to judicial custody is 19.04.2022 and as regards the detention order in II HCP, the date on which the detenu was remanded to judicial custody is 21.04.2022. This means that in the I HCP, the impugned detention order



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was made 54 days later and in the II HCP, the impugned detention order was made 56 days later. As regards this delay, there is no explanation. We remind ourselves of the *Sushanta Kumar* case [*Sushanta Kumar Banik Vs. State of Tripura & Ors.* reported in *2022 LiveLaw (SC) 813: 2022 SCC OnLine SC 1333*] wherein Hon'ble Supreme Court dealing with a case arising under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] has held that as regards live and proximate link between grounds and purpose of detention snapped point, 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 find that captioned matters fall under the latter category i.e., unexplained delay as acceptable explanation has been set out. Thereafter in *Mallada K Sri Ram Vs. The State of Telangana & Ors.* in SLP (Crl) No.1788 of 2022 being order dated 04.04.2022, Hon'ble Supreme Court has held that clamping of detention order on a stale ground case tantamounts to punishment without trial.

6. In the light of the narrative thus far, the impugned detention orders both dated 15.06.2022 deserve to be set aside.



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7. Ergo, the sequitur is, impugned detention orders both dated 15.06.2022 bearing reference No. 155//BCDFGISSSV/2022 (assailed in H.C.P.No.1392 of 2022) and 156//BCDFGISSSV/2022 (assailed in H.C.P.No.1403 of 2022) are set aside and detenus Thiru.Karthick @ Kulla Karthick, male about aged 26 years, son of Rajendran and Thiru.Ramesh @ Rangaraj, male aged 22 years, son of Govindaraj are directed to 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 II, Puzhal, Chennai.



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5. The Public Prosecutor
Madras High Court
Chennai - 104



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