



H.C.P.Nos.1460 and 1474 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

Coram

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

H.C.P.Nos.1460 and 1474 of 2022

Sriramalu
S/o.Duraikannu

... Petitioner in both H.C.Ps
/ friend of the detenu

-VS-

- 1.The State of Tamil Nadu,
Rep by its Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City Police,
Office of Commissioner of Police,
Avadi, Chennai – 600 054.
- 3.The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.



H.C.P.Nos.1460 and 1474 of 2022

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

... Respondents in both HCPs

Prayer in 1460 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 Memo No.70/BCDFGISSSV/2022 dated 05.07.2022 on the file of second respondent herein and set aside the same as illegal and produce the detainee Vinothkumar, son of Shanmugasundaram, aged about 40 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

Prayer in 1474 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 Memo No.72/BCDFGISSSV/2022 dated 05.07.2022 on the file of second respondent herein and set aside the same as illegal and produce the detainee Franklin, son of Lourdhusamy, aged about 23 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Mr.Ilayaraja Kandasamy
(in both HCPs)

For Respondents .. Mr.R.Muniyapparaj
(in both HCPs) Additional Public Prosecutor
assisted by
Mr.M.Sylvester John



H.C.P.Nos.1460 and 1474 of 2022

COMMON ORDER

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

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

2. For the sake of convenience, 'H.C.P.No.1460 of 2022' shall be referred to as 'I HCP' and 'H.C.P.No.1474 of 2022' shall be referred to as 'II HCP'.

3. In 'I HCP', a detention order dated 05.07.2022 bearing reference Memo No.70/BCDFGISSSV/2022 has been assailed by a friend of the detenu and in the 'II HCP', a detention order dated 05.07.2022 bearing reference Memo No.72/BCDFGISSSV/2022 has been assailed by a friend of the detenu. [These two impugned detention orders qua I HCP and II HCP, respectively shall hereinafter be referred as 'I impugned detention order' and 'II impugned detention order', respectively for the sake of convenience and clarity] [to be noted the two orders shall be collectively referred to as



H.C.P.Nos.1460 and 1474 of 2022

'impugned detention orders' for the sake of convenience].

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4. Mr.Ilayaraja Kandasamy, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John for the respondents in both captioned HCPs are before us.

5. Notwithstanding very many averments in the support affidavit, learned counsel for petitioner in his campaign against the impugned detention orders predicated his argument on the point that there is delay in making the detention orders. Adverting to I and II HCPs, learned counsel submitted that the detenus were arrested on 28.05.2022 but the impugned detention orders were made only on 05.07.2022 by the detaining authority.

6. Though learned counsel for petitioner submitted that there is a delay of 39 days in making the detention orders, we construe the argument as 'live and proximate link between grounds of detention and purpose of detention having snapped'.



H.C.P.Nos.1460 and 1474 of 2022

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7. A recent case law as regards live and proximate link between grounds and purpose of detention snapping is ***Sushanta Kumar Banik*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in **2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333**].

8. Before we advert to the aforementioned case law, it may be necessary to look at the averments. In the I HCP, this point has been canvassed/articulated as Ground No.(h), which reads as follows:

'h). The detenue arrested and remanded on 28.05.2022 at about 09.00 Hrs, the sponsoring authority prepared a detention order, and the detaining authority go through the detention and the second respondent order was passed on 05.07.2022. 39 days delay in passing the detention without explanation. Hence the detention order is vitiated.'

In the II HCP, the same ground has been urged as Ground No.(h), which reads as follows:

'h). The detenue arrested and remanded on 28.05.2022 at about 09.00 Hrs, the sponsoring authority prepared a detention order, and the detaining authority go through the detention and the second respondent order was passed on 05.07.2022. 39 days



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H.C.P.Nos.1460 and 1474 of 2022

delay in passing the detention without explanation. Hence the detention order is vitiated.'

In the I HCP, in the counter affidavit, the aforementioned point has been met in paragraph 12, which reads as follows:

“12. I respectfully submit that the averment made in Paragraph Ground (h) of the affidavit is incorrect and denied as false. The detenu Thiru Vinothkumar was arrested on 28.05.2022 and enquired. On enquiry, the detenu has admitted his involvement in the offences. After completing all legal formalities and procedures, the detenu was remanded to judicial custody on the same day in the ground case. The Sponsoring authority has collected all records and material evidences against the detenu Thiru Vinothkumar and initiated the proposal for the detention of the detenu as Goonda under the Tamil Nadu Act 14 of 1982. The detention order was passed on 05.07.2022 after meticulously considering the material particulars in the proposal submitted by the Sponsoring authority. The order of detention was passed by the Detaining authority on 05.07.2022 only after coming at a subjective satisfaction.”

In the counter affidavit in II HCP also, the aforementioned point has been met in paragraph 12, which reads as follows:



H.C.P.Nos.1460 and 1474 of 2022

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'12. I respectfully submit that the averment made in Paragraph Ground (h) of the affidavit is incorrect and denied as false. The detenu Thiru Franklin was arrested on 28.05.2022 and enquired. On enquiry, the detenu has admitted his involvement in the offences. After completing all legal formalities and procedures, the detenu was remanded to judicial custody on the same day in the ground case. The Sponsoring authority has collected all records and material evidences against the detenu Thiru Franklin and initiated the proposal for the detention of the detenu as Goonda under the Tamil Nadu Act 14 of 1982. The detention order was passed on 05.07.2022 after meticulously considering the material particulars in the proposal submitted by the Sponsoring authority. The order of detention was passed by the Detaining authority on 05.07.2022 only after coming at a subjective satisfaction.'

10. We carefully considered the submissions on either side.

11. Before proceeding further with discussion on the point exhorted, we revert to ***Sushanta Kumar Banik*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in ***2022 LiveLaw (SC) 813***] alluded to supra. ***Sushanta Banik Kumar*** case arose under 'Prevention of Illicit Traffic



H.C.P.Nos.1460 and 1474 of 2022

in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tripura. After noticing the trajectory the matter took from the time of proposal of Sponsoring Authority, Hon'ble Supreme Court held that this live and proximate link between grounds of detention and purpose of detention snapping point should be examined on a case to case basis. Besides this, Hon'ble Supreme Court also held that this point has two facets. The first facet is unreasonable delay and the second facet is unexplained delay. In the cases on hand, from the rival contentions which have been articulated in affidavit and counter affidavit (the relevant portions have been extracted and reproduced supra), we find that under the second or latter facet of the point i.e., unexplained delay. The reason is, the explanation offered by the State in the counter is rather generic and does not pass muster to say that the ground case has not become stale.

12. In the light of the narrative, discussion and dispositive reasoning thus far, the impugned detention orders are vitiated as live and proximate link between grounds of detention and purpose of detention have snapped. The ground cases have become stale qua the two impugned detention



H.C.P.Nos.1460 and 1474 of 2022

orders.

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13. Ergo, the sequitur is,

(i) H.C.P. No.1460 of 2022 is allowed, impugned detention order dated 05.07.2022 bearing reference Memo No.70/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Vinothkumar, male, aged 40 years, son of Mr.Shanmugasundaram, now detained in Central Prison-II, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(ii) H.C.P. No.1474 of 2022 is allowed and impugned detention order dated 05.07.2022 bearing reference Memo No.72/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Franklin, male, aged 23 years, son of Mr.Lourdhusamy, now detained in Central Prison-II, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.



H.C.P.Nos.1460 and 1474 of 2022

Captioned HCPs ordered on above terms.

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(M.S,J.) (M.N.K.,J.)
27.02.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

- 1.The Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City Police,
Office of Commissioner of Police,
Avadi, Chennai – 600 054.
- 3.The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.



H.C.P.Nos.1460 and 1474 of 2022

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4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

5.The Public Prosecutor,
Madras High Court,
Chennai – 104.



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H.C.P.Nos.1460 and 1474 of 2022

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

rsi

H.C.P.Nos.1460 and 1474 of 2022

27.02.2023