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HCP No.1475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

Coram

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

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

H.C.P. No.1475 of 2022

Chinnaraj
S/o.Raman

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Additional 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 the Commissioner of Police,
Avadi, Chennai - 600 007.

3.The Inspector of Police,
T-1 Ambattur Police Station,
Chennai.

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

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in Memo No.71/BCDFGISSSV/2022, dated 05.07.2022 on the file of by the second respondent herein and set aside the same as illegal and produce the detenu Manickam, son of Chinnaraj, aged about 24 years who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
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 convenience and brevity] has been filed by the father of the detenu assailing 'detention order dated 05.07.2022 bearing reference No.71/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience] made by the 'second respondent' [hereinafter 'detaining authority' for the sake of convenience and clarity].

2.Mr.Ilayaraja Kandasamy, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for respondents are before us.

3.We are informed by both sides that as regards two co-accused in



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the ground case also preventive detention orders were clamped and the preventive detention orders as regards two co-accused are identical. The same were challenged by way of H.C.P.Nos.1460 and 1474 of 2022 and the similar preventive detention orders were set aside by this Court by order dated 27.02.2023, which reads as follows:

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 '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'.

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),



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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 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:

'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.'

910. We carefully considered the submissions on either side.

10. 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 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



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generic and does not pass muster to say that the ground case has not become stale.

11.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 orders.

12.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.

Captioned HCPs ordered on above terms.



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4.We are further informed by both sides without any disputation or contestation that the points available for the co-accused in the aforementioned two HCPs are available to the petitioner in the captioned HCP also.

5.We are reminded of the age old adage 'Sauce to Goose is sauce to Gander too'. The sequitur is, in captioned HCP also the impugned detention order deserves to be set aside.

6.Apropos, the further sequitur is, captioned HCP is allowed and the detention order dated 05.07.2022 bearing reference No.71/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Manickam, aged 24 years, son of Thiru.Chinnaraj is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
28.02.2023

Index: Yes/No

Neutral Citation : Yes/No

cse

Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai



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- 1.The Additional Secretary to Government,
Department of Prohibition and Excise [Home],
Fort St.George ,
Chennai - 600 009.
- 2.The Commissioner of Police,
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Office of the Commissioner of Police,
Avadi, Chennai - 600 007.
- 3.The Inspector of Police,
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- 5.The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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

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