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HCP No.1537 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

Coram

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

H.C.P. No.1537 of 2022

John Kennedy

.. Petitioner

Vs.

The State represented by its

1.The Secretary to Government [Home]
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police [Law and Order]
C-2 Elephant Gate Police Station,
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 of pertaining to the order of detention dated 06.07.2022 passed by the 2nd respondent bearing Memo No.185/BCDFGISSSV/2022 and quash the same and produce the detenue Stanli, Male, aged about 26 years, S/o.John Kennedy before this Court and set him at liberty forthwith from Central Prison, Puzhal, Chennai - 66.

For Petitioner : Mr.M.Kalaiyaran
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

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 a 'preventive detention order dated 06.07.2022 bearing reference No.185/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.



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WEB COPY 2. Impugned detention order has been made under '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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.216 of 2022 on the file of C2 Elephant Gate Police Station for alleged offences under Sections 8(c) & 20(b)(ii)(C), 25, 29(2)(a) of 'Narcotic and Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4.Mr.M.Kalaiyaran, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for respondents are before us.

5.Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 30.04.2022 but the impugned detention order has been made only on 06.07.2022.

6.Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation is unacceptable.

7.We remind ourselves of *Sushanta Kumar Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw*



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(SC) 813 : 2022 SCC OnLine SC 1333]. To be noted, **Banik** case law arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tirupura, wherein after considering the proposal by the Sponsoring Authority and after noticing the trajectory the matter took, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be examined on a case to case basis. Hon'ble Supreme Court has held in **Banik** case law that this point has two facets. One facet is 'unreasonable delay' and other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

8.Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.07.2022 bearing reference No.185/BCDFGISSSV/2022 made by the second respondent is set aside



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and the detenu Thiru.Stanli, aged 26 years, son of Thiru.John Kennedy, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
08.03.2023

Index: Yes/No

Neutral Citation : Yes/No

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

To

- 1.The Secretary to Government [Home]
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.
- 4.The Inspector of Police [Law and Order]
C-2 Elephant Gate Police Station, Chennai.
- 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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