



H.C.P.No.1568 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1568 of 2022

Kavitha

W/o.Viji @ Vijay

..

Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The District Magistrate cum District Collector
Thiruvallur District, Thiruvallur.
3. The Superintendent of Police
No.4VRV + 4JR, Chinna Ekkadu
Jaya Nagar, Thiruvallur - 602 001.
4. The Superintendent of Prison
Central Prison, Puzhal-II
Chennai.
5. The Inspector of Police
E-1, Ponneri Police Station
Thiruvallur District.

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Respondents

Page Nos.1/7



H.C.P.No.1568 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the impugned order of detention dated 08.07.2022 in vide Memo No.37/BCDFGISSSV/2022 passed by the 2nd respondent herein and quash the same and consequently, direct the respondents to set forth the detenu Viji @ Vijay, aged 33 years, now confined in Central Prison-II, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.D.Prasanna Kumar
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 08.07.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.37/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



H.C.P.No.1568 of 2022

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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.126 of 2022 on the file of Ponneri Police Station for alleged offences under Sections 147, 148, 294(b), 324, 307 and 302 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.

4. Mr.D.Prasanna Kumar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr. Mr.M.Sylvester John, learned counsel for all respondents are before us.

Page Nos.3/7



H.C.P.No.1568 of 2022

WEB COURT

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 09.05.2022 but the impugned detention order has been made only on 08.07.2022.

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 as well as one adverse 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 (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



H.C.P.No.1568 of 2022

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 08.07.2022 bearing reference B.C.D.F.G.I.S.S.V.No.37/2022 made by the second respondent is set aside and the detenu Thiru.Viji @ Vijay, aged 33 years, son of Babu, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



H.C.P.No.1568 of 2022

10. Captioned HCP ordered on the above terms. There shall be no

order as to costs.

(M.S.,J.)

(M.N.K.,J.)

06.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The District Magistrate cum District Collector
Thiruvallur District, Thiruvallur.
3. The Superintendent of Police
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5. The Inspector of Police
E-1, Ponneri Police Station
Thiruvallur District.
6. The Public Prosecutor
High Court, Madras.

Page Nos.6/7



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H.C.P.No.1568 of 2022

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

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H.C.P.No.1568 of 2022

06.03.2023

Page Nos.7/7