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H.C.P.No.1543 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

Coram

THE HON'BLE Mr.JUSTICE **M.SUNDAR**
and
THE HON'BLE Mr.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1543 of 2022

Mr.T.Jayasankar
S/o.Tharmalingam

... Petitioner/Father of the detenu

-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.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the Impugned order of detention dated 16.07.2022 in vide Memo No.39/BCDFGISSSV/2022 passed by the 2nd respondent herein and quash



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the same and consequently direct the respondents to set forth the detenu Karthikeyan @ Motta Karthick aged 29 years S/o. Jaisankar 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

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 father of detenu assailing a 'preventive detention order dated 16.07.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.39/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fifth respondent is the Sponsoring Authority.

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.



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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.126/2022 on the file of Ponneri Police Station for alleged offences under Sections 147, 148, 294(b), 324, 307, 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for 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.

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

5. Notwithstanding very many averments/grounds in the support affidavit, Mr.D.Prasanna Kumar, learned counsel for petitioner points out that the date of arrest is 09.05.2022 and the impugned detention order has been made on 16.07.2022.

6. Though learned counsel submitted that there is delay in making the impugned detention order, legally speaking the proposition is 'live and proximate link' between the grounds of detention and purpose of detention has snapped. A recent case in this regard is ***Sushanta Kumar Banik*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in 2022



LiveLaw (SC) 813]. To be noted, **Sushanta Kumar Banik** 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 the State of Tripura. In **Banik**'s case it comes to light that this 'live and proximate link' point turns on two facets. One facet is, 'unreasonable delay' and the other facet is 'unexplained delay'. In the case on hand, the impugned detention order has been made nearly 2 ½ months after the arrest in the ground case and such time consumed remains unexplained. Therefore, this falls under latter facet i.e., second facet of unexplained delay. This means that the ground case which constitutes the substratum of the impugned detention order has become stale.

7. In the light of the discussion and dispositive reasoning thus far, we have no difficulty in saying that the impugned detention order is vitiated owing to the ground case which is substratum becoming stale, which in turn means that live and proximate link between grounds of detention and purpose of detention snapping.

8. Ergo, the sequitur is, H.C.P. No.1543 of 2022 is allowed, impugned detention order dated 16.07.2022 bearing reference B.C.D.F.G.I.S.S.S.V. No.39/2022 made by the second respondent is set aside and detenu



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Mr.Karthikeyan @ Motta Karthick, male, aged 29 years, son of Mr.Jaisankar, now detained in Central Prison-II, Puzhal, Chennai-66 is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
02.03.2023

Speaking / Non-speaking

Neutral Citation : Yes / No
kmi

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



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