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H.C.P.Nos.1604 & 1612 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.Nos.1604 and 1612 of 2022

Ganamabal

.. Petitioner
in HCP No.1604/22

Poonkodi

.. Petitioner
in HCP No.1612/22

Vs

1.The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police
Avadi City Office of the Commissioner of Police,
Avadi, Chennai – 600 054.

3.The Inspector of Police,
M-2 Madhavaram Milk Colony Police Station,
Madhavaram, Thiruvallur District.

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

..
Respondents
in both HCPs

Prayer in HCP No.1604 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 in connection with the order of

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detention passed by the second respondent dated 05.07.2022 in BCDFGISSSV No.64/2022 against the petitioner's son Prabu, son of Udhaya Kumar, aged about 38 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

Prayer in HCP No.1612 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 in connection with the order of detention passed by the second respondent dated 05.07.2022 in BCDFGISSSV No.63/2022 against the petitioner's husband Jaba @ Jabakumar, son of Thetrarivalan, aged about 34 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	:	Mr.A.Manoj Kumar for Mr.M.Manimaran in both the HCPs
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor in both the HCPs

COMMON ORDER

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

This common order will now dispose of these two captioned 'Habeas Corpus Petitions' ('HCPs' in plural and 'HCP' in singular for



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the sake of convenience and clarity). Further more, H.C.P.No.1604 of 2022 shall be referred as 'I HCP' and H.C.P.No.1612 of 2022 shall be referred as 'II HCP' for the sake of convenience and clarity.

2. I HCP has been filed by mother of detenu assailing a 'preventive detention order dated 05.07.2022 bearing reference No.64/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

3. II HCP has been filed by wife of detenu assailing a 'preventive detention order dated 05.07.2022 bearing reference No.63/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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4. Impugned detention orders have 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 detenus are 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

5. There are two adverse cases (I HCP). The ground case which is the sole substratum of the impugned detention orders is Crime No.210 of 2022 on the file of M-2 Madhavaram Milk Colony Police Station for alleged offence under Section 302 of '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 orders, it is not necessary to delve into the factual matrix or be detained further by facts.



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6. We are informed that the dates and facts are identical and the detenus in the two captioned HCPs i.e., I HCP and II HCP are co-accused in the same ground case.

7. Mr.A.Manoj Kumar, learned counsel representing counsel on record for petitioners and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

8. Learned counsel for petitioners 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 01.06.2022 but the impugned detention orders have been made only on 05.07.2022.

9. Mr.E.Raj Thilak, 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 of learned State Additional Public Prosecutor is unacceptable.



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10. 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 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.

11. To be noted, **Banik** case has been respectfully followed by this Bench in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu**



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and others reported vide Neutral Citation of Madras High Court being **2023/MHC/733** and series of other HCP matters.

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

13. Ergo, the sequitur is,

(i) H.C.P. No.1604 of 2022 is allowed, impugned detention order dated 05.07.2022 bearing reference Memo No.64/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Thiru.Prabhu, male, aged 38 years, son of Thiru.Udhayakumar, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(ii) H.C.P. No.1612 of 2022 is allowed, impugned detention order dated 05.07.2022 bearing reference Memo No.63/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Thiru.Jeba @ Jebakumar, male, aged 34 years, son of Thiru.Thetrarivalan, now detained in



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Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCPs are ordered on above terms. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
13.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Police
Avadi City Office of the Commissioner of Police,
Avadi, Chennai – 600 054.
- 3.The Inspector of Police,
M-2 Madhavaram Milk Colony Police Station,
Madhavaram, Thiruvallur District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor
High Court, Madras.

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