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HCP No.1605 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.1605 of 2022

Manikandan

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

3.The Inspector of Police,
G-7 Chetpet Police Station, Chennai.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus to call for the entire records relating



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to the petitioner's friend detention under Tamil Nadu Act 14 of 1982 vide detention order dated 30.07.2022 on the file of the second respondent herein made in proceedings BCDFGISSV No.223/2022 and quash the same as illegal and consequently direct the respondents herein to produce the said Petitioners friend namely Jamaludeen son of Mohamed Meeran aged 46 years before this Court and set the petitioner's friend at liberty from detention now petitioner's friend detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.C.Chellappan
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 friend of the detenu assailing a 'preventive detention order dated 30.07.2022 bearing reference BCDFGISSSV.No.223/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the third respondent is the sponsoring authority and the second respondent is the detaining authority as impugned



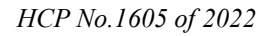
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detention order has been made by the second respondent.

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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 four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.102 of 2022 on the file of G-7 Chetpet Police Station for alleged offences under Sections 341, 294(b), 323, 397, 336, 427 and 506(ii) 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 order, it is not necessary to delve into the factual matrix or be detained further by facts.



7. We remind ourselves of *Sushanta Kumar Banik's* case [*Sushanta*



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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.

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 30.07.2022 bearing reference



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BCDFGISSSV.No.223/2022 made by the second respondent is set aside and the detenu Thiru.Jamaludeen, aged 46 years, son of Thiru.Mohamed Meeran, 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

cse

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,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Inspector of Police,
G-7 Chetpet Police Station, Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal, 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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