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HCP No.1806 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.1806 of 2022

Kameshwari

.. Petitioner

Vs.

1.The State represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
O/o.Commissioner of Police,
Vepery, Chennai – 600 007.

3.The Inspector of Police
C-2 Elephant Gate Police Station,
Chennai – 600 108.

4.The Superintendent of Prison,
Central Prison-II, Puzhal,
Chennai – 600 066.

... 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 entire records relating to the detention order dated 06.07.2022 made in the detention order Memo No.184/BCDFGISSSV/2022 passed by the 2nd respondent herein and to quash the same and direct the respondents to produce the body of the detenu Mohan Kumar male Hindu age 41 years S/o.Durai who has been detained in Central Prison Puzhal Chennai - 600 066 before this Court and set the petitioner as liberty now confined at Central Prison Puzhal Chennai-600066.

For Petitioner	:	Mr.M.Dhivakar
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 wife of the detenu assailing a 'preventive detention order dated 06.07.2022 bearing reference No.184/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 (SC) 813 : 2022 SCC OnLine SC 1333***]. To be noted, ***Banik*** case law



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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.184/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mohan Kumar, aged 41 years, son of Thiru.Durai, is



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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

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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned matter is listed under the cause list caption 'FOR BEING MENTIONED'.

2. Mr.S.Naveen Kumar, learned counsel representing Mr.M.Dhivakar, counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all the respondents are before us.

3. We are informed that an inadvertent typographical/secretarial error has crept in qua paragraph 4 of the



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order dated 08.03.2023 vide which the captioned HCP was disposed of.

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4. Elaborating on the inadvertent error, it is pointed out that the counsel on record for petitioner is Mr.M.Dhivakar, which is correctly recorded in the appearance portion of the order. In paragraph 4 instead of Mr.M.Dhivakar, the name of Mr.M.Kalaiyarasan has been typed. To be noted paragraph 4 reads as follows:

'4.Mr.M.Kalaiyarasan, 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. Both sides request that the aforementioned inadvertent error may please be corrected as it is innocuous and does not in any manner impact the outcome of the matter. Request acceded to and therefore paragraph 4 will now read as follows:

'4.Mr.M.Dhivakar, 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.'



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6. Except the above change in paragraph 4, the order dated 08.03.2023 will remain the same in all other aspects.

7. This order/proceedings shall be uploaded along with the 08.03.2023 order as an addenda/errata and Registry shall issue certified copy accordingly.

[M.S.J.,] [M.N.K.J.,]
31.03.2023

mmi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
O/o.Commissioner of Police,
Vepery, Chennai – 600 007.
- 3.The Inspector of Police
C-2 Elephant Gate Police Station,
Chennai – 600 108.
- 4.The Superintendent of Prison,
Central Prison-II, Puzhal,
Chennai – 600 066.



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5. The Public Prosecutor,
High Court of Madras,
Chennai - 104.

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

cse/mmi

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