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H.C.P.Nos.1684, 1687, 1723 and 1724 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.Nos.1684, 1687, 1723 and 1724 of 2022

Usharani ... Petitioner in H.C.P.No.1684 / 2022
W/o.Murugan / Mother of the detenu

Kannimari ... Petitioner in H.C.P.No.1687 /2022
W/o.Yesudoss /Mother of the detenu

Sabiya Banu ... Petitioner in H.C.P.No.1723 /2022
W/o.Abdul Kareem /Mother of the detenu

Malarkodi ... Petitioner in H.C.P.No.1724 /2022
W/o.Annadurai /Mother of the detenu

-VS-

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



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2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Perambalure District

3. The Superintendent of Police
O/o. Superintendent of Police
Perambalure District

4. The Superintendent of Prison
Trichy Central Prison
Trichy District

5. The Inspector of Police
Perambalure Police Station
Perambalure District

... Respondents in all HCPs

Prayer in 1684 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the detention order in Cr.M.P.No.29 of 2022 dated 30.06.2022 on the file of the Respondent No.2 and quash the same and direct the Respondents to produce the body and person of petitioner son one named Thiru.Naveen @ Naveenkumar aged about 22 years son of Murugesan, now confined at Central Prison Trichy before this Court and set him at liberty forthwith.

Prayer in 1687 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the detention order in Cr.M.P.No.26 of 2022 dated 30.06.2022 on the file of the Respondent No.2 and quash the same and direct the Respondents to produce the body and person of petitioner son one



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named Soloman Jenat, aged about 23 years, son of Jesudoss, now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

Prayer in 1723 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the detention order in Cr.M.P.No.27 of 2022 dated 30.06.2022 on the file of the Respondent No.2 and quash the same and direct the Respondents to produce the body and person of petitioner son one named Mohammed Halith, aged about 24 years, son of Abdul Kareem, now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

Prayer in 1724 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the detention order in Cr.M.P.No.28 of 2022 dated 30.06.2022 on the file of the Respondent No.2 and quash the same and direct the Respondents to produce the body and person of petitioner son one named Kodikamal @ Kamalahasan, aged about 27 years, son of Annadurai, now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

For Petitioner ..	Mr.M.Mohamed Saifulla
(in all HCPs)	for Mr.P.Muthamizh Selvakumar
For Respondents ..	Mr.R.Muniyapparaj
(in all HCPs)	Additional Public Prosecutor



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COMMON ORDER

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

This common order will now govern the captioned four 'Habeas Corpus Petitions' [hereinafter 'HCP' in singular and 'HCPs' in plural for the sake of brevity].

2. For the sake of convenience, 'H.C.P.No.1684 of 2022' shall be referred to as 'I HCP', 'H.C.P.No.1687 of 2022' shall be referred to as 'II HCP', 'H.C.P.No.1723 of 2022' shall be referred to as 'III HCP' and 'H.C.P.No.1724 of 2022' shall be referred to as 'IV HCP'.

3. Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondents in all HCPs are before us.

4. We are informed by both sides that as regards the captioned four HCPs, the four detenus are co-accused in the same ground case. We are also informed that all four impugned detention orders are identical. On this basis, a joint request is made to take up the captioned four HCPs together and hear them out. Request acceded to.

5. At the Bar, we were requested to take I HCP as the lead matter.



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There is no dispute or disagreement that the ground/s available/applicable or not available / applicable to I HCP are available/applicable or not available /applicable to II, III and IV HCPs also. On this basis, we would now consider the I HCP.

6. Notwithstanding very many averments in the support affidavit, Mr.M.Mohammed Saifulla, learned counsel for petitioner exhorts one point and that one point turns on 'live and proximate link between grounds of detention and purpose of detention having snapped'. Learned counsel draws our attention to Ground No.XIV under the caption 'GROUNDS' in support affidavit and submits that this point has been articulated as 42 days delay in making the detention order. This Ground No.XIV as articulated in the support affidavit of the I HCP reads as follows:

'XIV. I state that my Son was arrested by the sponsoring authority on 18.05.2022. The detaining authority has passed the detention order against my son on 30.06.2022. There is 42 days delay in passing detention order.

*Decision of this Hon'ble Court in **S.Dhanam – Vs-State of Tamil Nadu** reported in **2018(3) MWN (Cr) 81 DB***

“Such delays tend to have an effect of snapping the link between prejudicial activity and passing of preventive order”



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7. Learned State Additional Public Prosecutor advertent to the counter affidavit filed by the State submits that aforementioned point exhorted by the counsel for petitioner has been met by the State in Paragraph 20 of the counter affidavit. Paragraph 20 of the counter affidavit filed by the State reads as follows:

'20. I submit that regarding the averment put forth in ground [XIV] of the affidavit, I respectfully submit that the allegations as to over 42 days delay in passing detention order is not maintainable for the reason that there is no time limit within which an antisocial element could be detained under Tamil Nadu Act 14 of 1982. Further in the interim period the sponsoring authority collected relevant records pertaining to the detention from the concerned courts. After collecting the records the sponsoring authority filed an affidavit, before the detaining authority and after perusing the connected documents and on the detaining authority arriving at a subjective satisfaction, the detention order was passed. Hence the averment made in this ground could not be sustained.'



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8. Before considering the stated positions of the parties, we remind ourselves of *Sushanta Kumar Banik* case [*Sushanta Kumar Banik Vs. State of Tripura & Ors.* reported in *2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333*] which arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tripura. After taking note of the proposal from the sponsoring authority and the trajectory the matter took, Hon'ble Supreme Court held that the point pertaining to 'live and proximate link between grounds of detention and purpose of detention snapping' point should be examined on a case to case basis. Likewise, it comes to light that this point also has two facets. One facet is, unreasonable delay and the other facet is unexplained delay.

9. We examined the case on hand on the factual matrix that is before us. We find that the ground case is alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. We also find that the ground case or for that matter the two adverse cases are not so complex that the consumption of



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time is adequately explained. Therefore, we are of the view that the cases on hand fall under the second or latter facet of the point i.e., unexplained delay.

10. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in coming to the conclusion that live and proximate link between grounds of detention and purpose of detention have snapped. To put it differently, we have no difficulty in saying that the ground case and two adverse cases have become stale qua the four impugned detention orders. The ground and two adverse cases having become stale is a buttressing factor of the point that live and proximate link between grounds of detention and purpose of detention has snapped.

11. Ergo, the sequitur is,

(i) H.C.P. No.1684 of 2022 is allowed, impugned detention order dated 30.06.2022 bearing reference Cr.M.P.No.29 of 2022 made by the second respondent is set aside and detenu Mr.Naveen @ Naveenkumar, male, aged 22 years, son of Mr.Murugan, now detained in Central Prison, Tiruchirappalli is directed to be set at



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liberty forthwith unless required in connection with any other case/s.

(ii) H.C.P. No.1687 of 2022 is allowed and impugned detention order dated 30.06.2022 bearing reference Cr.M.P.No.26 of 2022 made by the second respondent is set aside and detenu Mr.Soloman Jenat, male, aged 23 years, son of Mr.Jesudoss, now detained in Central Prison, Tiruchirappalli is directed to be set at liberty forthwith unless required in connection with any other case/s.

(iii) H.C.P. No.1723 of 2022 is allowed and impugned detention order dated 30.06.2022 bearing reference Cr.M.P.No.27 of 2022 made by the second respondent is set aside and detenu Mr.Mohammed Halith, male, aged 24 years, son of Mr.Abdul Kareem, now detained in Central Prison, Tiruchirappalli is directed to be set at liberty forthwith unless required in connection with any other case/s.

(iv) H.C.P. No.1724 of 2022 is allowed and impugned detention order dated 30.06.2022 bearing reference Cr.M.P.No.28 of



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2022 made by the second respondent is set aside and detenu

Mr.Kodikamal @ Kamalahasan, male, aged 27 years, son of Mr.Annadurai, now detained in Central Prison, Tiruchirappalli is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCPs ordered on above terms.

(M.S,J.) (M.N.K.,J.)
15.02.2023

Index: Yes

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli



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To

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Madras High Court
Chennai - 104



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

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