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H.C.P.No.1825 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1825 of 2022

Suresh

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise [XVI] Dept.,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Vellore, Vellore District.
- 3.The Superintendent of Police,
Vellore, Vellore District.
- 4.The Superintendent of Prison,
Central Prison,
Vellore, Vellore District.
- 5.The Inspector of Police,
Sathuvachari Police Station,
Vellore District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent in his office C3.D.O.No.87/2022 dated 24.08.2022 against the petitioner's son by name Thiru.Dhilip @ Pragash, S/o.Suresh, aged about 24 years now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of detenu assailing a 'preventive detention order dated 24.08.2022 bearing reference C3/D.O.No.87/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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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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 are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.167/2022 on the file of Sathuvachari Police Station for alleged offences under Sections 341, 294(b), 392, 397 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.

4. Mr.E.Kannadasan, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by

Mr.M.Sylvester John, learned counsel for all 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 arrest in the ground case is 13.07.2022 but the impugned detention order has been made only on 24.08.2022. Learned counsel further submitted that the similar case which was referred by the detaining authority pertains to Crime No.2162 of 2020, in which bail was granted in CrI.M.P.No.1191 of 2020 on 03.07.2020. Learned counsel by referring to Page 101 of grounds booklet, submitted that bail granted in the similar case is due to the direction of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.1/2020 in Re:Contagion of COVID-19 Virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court and in furtherance to the directions of the Hon'ble the Then Chief Justice of this Court vide letter dated 21.03.2020 and considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection and spreading of the



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virus. But this is not the case of the petitioner and hence, there is no similarity.

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 in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor 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 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 a proposal by a 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.



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Hon'ble Supreme Court has held in **Banik** case law that this point has two facets. One facet is 'unreasonable delay' and the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

8.To be noted, **Banik** case has been respectfully followed by this Court 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 and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/733, Sangeetha Vs. The Secretary to the Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and a series of other orders in HCP cases.

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



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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 24.08.2022 bearing reference C3/D.O.No.87/2022 made by the second respondent is set aside and the detenu Thiru.Dhilip @ Pragash, male, aged 24 years, son of Thiru.Suresh 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.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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



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- 6.The Public Prosecutor,
High Court, Madras.



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

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