



H.C.P.No.1843 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1843 of 2022

J.Maguesvary
W/o.Sekar

..

Petitioner/
Mother of detenu

Vs.

1. The Special Secretary to Government
Home Department
Chief Secretariat
Goubert Avenue
Puducherry – 605 001
2. The Secretary to the Lieutenant Governor
Rajnivas
Puducherry
3. The District Magistrate Cum Authorized Officer
Puducherry
4. The Superintendent of Police
Puducherry East
Puducherry
5. The Superintendent of Prison

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Central Prison
Kalapet
Puducherry

6. The Station House Officer
Mudaliarpet Police Station
Puducherry

.. Respondents

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 3rd respondent dated 10.08.2022 in No.05/DM/RO/D2/PPASAA/2022 against the petitioner Vicky @ Vicky Roy, male aged 30 years, son of Segar @ John Marie Villeroy who is confined at Central Prison, Kalapet, Puducherry and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	:	Mr. A.Murugavel
For Respondents	:	Mr.K.S.Mohandoss Public Prosecutor (Puducherry)

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated



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10.08.2022 bearing reference No.5/DM/RO/D2/PPASAA/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent.

2. Impugned detention order has been made under 'The Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010)' [hereinafter 'said Act' for the sake of convenience] read with Order issued by the Home Department, Government of Puducherry in G.O.Ms.No.17 dated 7th March 2022 on the premise that the detenu is a 'Dangerous Person' within the meaning of sub section (1) of Section 3 of said Act.

3. There are many adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No. 62 of 2022 on the file of Mudaliarpur Police Station for alleged offences under Sections 147, 148, 449, 323 and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 149 IPC. 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.A.Murugavel, learned counsel on record for petitioner and Mr.K.S.Mohandoss, learned Public Prosecutor (Puducherry) 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 petitioner was surrendered and remanded to judicial custody on 12.05.2022 but the impugned detention order has been made only on 10.08.2022.

6. Mr.K.S.Mohandoss, learned State Public Prosecutor (Puducherry), 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 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



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

9. Before concluding, we also remind ourselves that preventive



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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 10.08.2022 bearing reference No.5/DM/RO/D2/PPASAA/2022 made by the third respondent is set aside and the detenu Thiru.Vicky @ Vicky Roy, aged 30 years, son of Segar @ John Marie Villeroy 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.)

(N.A.V.,J.)

20.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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