



H.C.P.No.1952 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.1952 of 2022

V.Kalaiselvi

.. Petitioner

Vs.

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

2.District Collector & District Magistrate,
Tirupathur District, Tirupathur – 635 601.

3.The Superintendent of Police,
Tirupathur District, Tirupathur.

4.The Superintendent of Prison,
Central Prison, Vellore – 2.

5.The Inspector of Police,
Ambur Town Police Station,
Tirupathur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

Page Nos.1/8



H.C.P.No.1952 of 2022

for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 10.09.2022 in C3/D.O.No.49/2022 against the petitioner's husband Vinoth, Male, aged 32 years, S/o.Manoharan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 10.09.2022 bearing reference C3.D.O.No.49/2022' [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.



H.C.P.No.1952 of 2022

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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3.There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.190/2022 on the file of Ambur Town Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A)ii of Tamil Nadu Prohibition Act read with Section 328 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.D.Balaji, learned counsel on record for petitioner and



H.C.P.No.1952 of 2022

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 29.07.2022 but the impugned detention order has been made only on 10.09.2022.

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 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



H.C.P.No.1952 of 2022

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. 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**



H.C.P.No.1952 of 2022

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.

10.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.09.2022 bearing reference C3/D.O.No.49/2022 made by the second respondent is set aside and the detenu Thiru.Vinoth, male, aged 32 years, son of Thiru.Manoharan 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.)

27.03.2023

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.

Page Nos.6/8



H.C.P.No.1952 of 2022

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- 6.The Public Prosecutor
High Court, Madras.



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H.C.P.No.1952 of 2022

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

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H.C.P.No.1952 of 2022

27.03.2023

Page Nos.8/8