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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1942 of 2022

Ajeethkumar @ Kool
S/o.Karuppusamy .. Petitioner

Vs.

1.State of Tamil Nadu
represented by its
Secretary to Government [Home],
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.

3.The Superintendent of Police,
Coimbatore District.

4.The Superintendent of Prison,
Central Prison, Coimbatore.

5.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore 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 entire records of the second respondent in his proceedings vide Cr.M.P.No.23/D.O/2022/E1 dated 16.08.2022 to quash the same and consequently, direct the respondents to produce the petitioner (detenu) Ajeethkumar @ Kool, aged 27 years, S/o.Karuppusamy before this Court, now confined in Central Prison, Coimbatore, set him at liberty forthwith.

For Petitioner : Mr.R.Rajan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
M. Sylvester John, Advocate

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O R D E R

[Order of the Court was made by **N.ANAND VENKATESH, J.]**

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by detenu assailing a 'preventive detention order dated 16.08.2022 bearing reference Cr.M.P.No.23/D.O/2022/E1' [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 the 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case and one ground case. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.595 of 2022 on the file of Thudiyalur Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' 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.

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4. Mr.R.Rajan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M. Sylvester John, Advocate, 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 06.06.2022 but the impugned detention order has been made only on 16.08.2022.

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 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 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

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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. Learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 06.06.2022 and remanded to judicial custody on 07.06.2022 in the course of investigation in Crime No.595 of 2022. It was further submitted that investigation was completed and the final report was filed on time on 19.10.2022 and the same was taken on file by the Special Court, Coimbatore, in C.C.No.167 of 2022.

10. We make it clear that the order in this HCP will not stand in the way of the concerned Court in dealing with the bail application, if any filed by the detenu and the same will be considered on its own merits and in accordance with law and keeping in mind the mandate provided u/s.37 of NDPS Act.

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

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.08.2022 bearing reference Cr.M.P.No.23/D.O/2022/E1 made by the second respondent is set aside and the detenu Thiru.Ajeethkumar @ Kool, aged 27 years, son of Thiru.Karuppusamy is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

[M.S., J.] [N.A.V., J.]
23.03.2023

Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No
gm

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

To

1.The Secretary to Government [Home],
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.

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and
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gm

3.The Superintendent of Police,
Coimbatore District.

4.The Superintendent of Prison,
Central Prison, Coimbatore.

5.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.

6.The Public Prosecutor
High Court, Madras.

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