



H.C.P.No.1977 of 2022

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.1977 of 2022

P.Murugasamy
S/o.Paraman

.. Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Magistrate and District Collector,
Coimbatore District.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore – 18.
- 5.The Inspector of Police,
Karumathampatti 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 records in Detention Order in Cr.M.P.No.21/D.O/2022/E1 dated 02.08.2022 on the file of the second respondent and set aside the same and direct the respondents herein to produce the body of the petitioner/detenu P.Murugasamy S/o.Paraman aged 32 years now confined in Central Prison at Coimbatore before this Court and set him at liberty.

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

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 detenu assailing a 'preventive detention order dated 02.08.2022 bearing reference Cr.M.P.No.21/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 are two adverse cases and one ground case. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.233 of 2022 on the file of Karumathampatti Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(C) and 25 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. Ms.R.Subadra Devi, 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 18.04.2022 but the impugned detention order has been made only on 02.08.2022.

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. 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 02.08.2022 bearing reference Cr.M.P.No.21/D.O/2022/E1 made by the second respondent is set aside and the detenu Thiru.P.Murugasamy, aged 32 years, son of Thiru.Paraman 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
Speaking Order
Neutral Citation : Yes
gm



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

WEB COPY

To

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
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- 6.The Public Prosecutor
High Court, Madras.



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