



WEB COPY



H.C.P.No.1988 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

and

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

H.C.P.No.1988 of 2022

Vellaiyammal

W/o.Selvam

.. Petitioner/Mother of Detenu

Vs.

The State represented by its

1.The Secretary to Government (Home)  
Prohibition and Excise Department,  
Government of Tamilnadu,  
Fort St. George,  
Chennai - 600 009.

2.The Commissioner of Police,  
Salem City,  
Salem District.

3.The Superintendent of Prison,  
Central Prison, Salem.

4.The Inspector of Police,  
Veeranam Police Station,  
Salem District.

.. Respondents



H.C.P.No.1988 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention dated 09.09.2022 passed by the 2<sup>nd</sup> respondent in C.M.P.No.110/Drug Offender/Salem City/2022 and quash the same and produce the Detenue Prakash S/o. Selvam, aged about 35 years before this Court and set him at liberty and the Detenue now confined in Central Prison, Salem.

For Petitioner : Mr.D.Mario Johnson

For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
assisted by  
Mr.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 mother of detenu assailing a 'preventive detention order dated 09.09.2022 bearing reference C.M.P.No.110/Drug Offender/Salem City/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth 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.1988 of 2022

WEB COPY

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 three adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.228 of 2022 on the file of Veeranam Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'The 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.



H.C.P.No.1988 of 2022

4. Mr.D.Mario Johnson, learned counsel for petitioner and 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 remand in the ground case is 04.07.2022 but the impugned detention order has been made only on 09.09.2022.

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.1988 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** reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and a series of other orders in



H.C.P.No.1988 of 2022

HCP cases.

WEB COPY

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 09.09.2022 bearing reference C.M.P.No.110/Drug Offender/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Prakash, aged 35 years, son of Thiru.Selvam, now detained in Central Prison, Salem is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)  
28.03.2023

Index : Yes / No  
Speaking / Non-speaking  
Neutral Citation : Yes / No  
rsi

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

To



*H.C.P.No.1988 of 2022*

- 1.The Secretary to Government (Home)  
Prohibition and Excise Department,  
Government of Tamilnadu,  
Fort St. George,  
Chennai - 600 009.
- 2.The Commissioner of Police,  
Salem City,  
Salem District.
- 3.The Superintendent of Prison,  
Central Prison, Salem.
- 4.The Inspector of Police,  
Veeranam Police Station,  
Salem District.
- 5.The Public Prosecutor  
High Court, Madras.



WEB COPY



*H.C.P.No.1988 of 2022*

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

rsi

**H.C.P.No.1988 of 2022**

**28.03.2023**