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H.C.P.No.2017 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

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

H.C.P.No.2017 of 2022

Poongothai

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai - 600009.
- 2.The District Collector and District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Superintendent of Prison,
Cuddalore Central Prison,
Cuddalore.
- 5.The Inspector of Police,
Nallanpillaipetral Police Station,
Sathiyamangalam Circle,
Gingee Taluk, Villupuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus directing the
respondents to produce the body of the detenu by name Kumar, aged

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49 years, Son of Shanmugam, presently confined at Central Prison, Cuddalore, before this court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 16.09.2022 made in Rc.No.C2/15810/2022 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.C.Munusamy
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 mother of detenu assailing a 'preventive detention order dated 16.09.2022 bearing reference Rc.No.C2/15810/2022' [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.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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.The ground case which is the sole substratum of the impugned detention order is Crime No.79 of 2022 on the file of Nallanpillaipetral Police Station for alleged offences under Sections 24(1), 6 of Cigarette and other Tobacco Products Act, 2003 read with Sections 273 and 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.C.Munusamy, 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.



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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 19.08.2022 but the impugned detention order has been made only on 16.09.2022. We also notice that the sole substratum of the impugned preventive detention order is a solitary case i.e., ground case. This means that there is no adverse case.

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 State Additional Public 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



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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 **2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others** reported vide Neutral Citation of Madras



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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 16.09.2022 bearing reference Rc.No.C2/15810/2022 made by the second respondent is set aside and the detenu Thiru.Kumar, male, aged 49 years, son of Thiru.Shanmugam 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.)
28.03.2023

Index : Yes
Neutral Citation : Yes
mmi

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



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To

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Home, Prohibition and Excise (XVI) Department,
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- 3.The Superintendent of Police,
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- 6.The Public Prosecutor,
High Court, Madras.



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

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