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H.C.P.No.2131 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

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

H.C.P.No.2131 of 2022

M.Kiruthiga

.. Petitioner

Vs

- 1.The Special Secretary to Government,
Home Department, Chief Secretariat,
Goubert Avenue, Puducherry – 605 001.
- 2.The Secretary to the Lieutenant Governor,
Rajnivas, Puducherry.
- 3.The District Magistrate cum Authorized Officer,
Puducherry.
- 4.The Superintendent of Police,
Puducherry East, Puducherry.
- 5.The Superintendent of Prison,
Central Prison, Kalapet, Puducherry.
- 6.The Station House Officer,
Mudaliarpet Police Station, Puducherry.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records

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in connection with the order of detention passed by the third respondent dated 28.09.2022 in No.08/DM/RO/D2/PPASAA/2022 against the petitioner's husband Kalvi @ Kalviselvam, male, aged 30 years, son of Selvapandian, who is confined at Central Prison, Kalapet, Puducherry and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Murugavel
For Respondents : Mr.K.S.Mohandass,
Public Prosecutor (Puducherry)

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 the detenu assailing a 'preventive detention order dated 28.09.2022 bearing reference No.8/DM/RO/D2/PPASAA/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent.



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2. Impugned detention order has been made under 'The Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010)' [hereinafter 'Puducherry Preventive Detention Act' for the sake of convenience and clarity] on the premise that the detenu is a 'Dangerous Person' within the meaning of Section 2(c) of Puducherry Preventive Detention Act.

3. There are nine adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.98 of 2022 on the file of Mudaliarpur Police Station for alleged offences under Sections 342, 395, 364-A and 506(ii) 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.A.Murugavel, learned counsel on record for petitioner and Mr.K.S.Mohandass, learned Public Prosecutor for Union Territory of Puducherry 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 14.07.2022 but the impugned detention order has been made only on 28.09.2022.

6. Mr.K.S.Mohandass, learned Public Prosecutor for Union Territory of Puducherry, 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 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 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



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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 High Court being **2023:MHC:1159** and a series of other orders in HCP cases.



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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 28.09.2022 bearing reference No.08/DM/RO/D2/PPASAA/2022 made by the third respondent is set aside and the detenu Thiru.Kalvi @ Kalviselvam, aged 30 years, son of Thiru.Selvapandian, 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.)
25.04.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Special Secretary to Government,
Home Department, Chief Secretariat,
Goubert Avenue, Puducherry – 605 001.
- 2.The Secretary to the Lieutenant Governor,
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3.The District Magistrate cum Authorized Officer,
Puducherry.

4.The Superintendent of Police,
Puducherry East, Puducherry.

5.The Superintendent of Prison,
Central Prison, Kalapet, Puducherry.

6.The Station House Officer,
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7.The Public Prosecutor,
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