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H.C.P.No.2320 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.2320 of 2022

Mohamed Thoufeeque
S/o.Mohamed Sultan

..Petitioner /
son of the detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Commissioner of Police
Vepery, Chennai District
3. The Inspector of Police
B-1, North Beach Police Station
Chennai
4. The Superintendent of Prison
Central Prison Puzhal, Chennai ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 16.09.2022 in

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No.304/BCDFGISSSV/2022 against the petitioner's father Mohamed Sultan, son of Mohamed Ali, aged about 54 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar
for Mr.V.T.Narendiran
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 son of the detenu assailing a 'preventive detention order dated 16.09.2022 bearing reference 304/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as 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. The ground case which is the sole substratum of the impugned detention order is Crime No.190 of 2022 on the file of B1 North Beach Police Station for alleged offences under Sections 9(A) read with Section 22 (c) and 25A of NDPS Act, 1985. 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.G.Vinodh Kumar, learned counsel representing the 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.



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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 petitioner was arrested on 01.06.2022 but the impugned detention order has been made only on 16.09.2022.

6. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. 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 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



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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.

9. We are also informed without any disputation by both sides that co-accused in the ground case was also clamped with an identical preventive detention order, co-accused assailed the same vide H.C.P.No.1999 of 2022



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and this HCP was allowed in and by an order dated 28.03.2023 by this Bench on the same point.

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.09.2022 bearing reference 304/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mohammed Sulthan, aged 54 years, son of Thiru.Mohammed Ali, 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.)

(D.N.R.,J.)

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Index : Yes/No

Speaking/No speaking order

Neutral Citation : Yes /No

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

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To

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Home, Prohibition and Excise Department
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Chennai – 600 009
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4. The Superintendent of Prison
Central Prison Puzhal, Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
Dr.D.NAGARJUN, J.,

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