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H.C.P.No.2251 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.2251 of 2022

S.Anantha Devi

.. Petitioner

Vs

- 1.The Secretary to Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
- 4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 5.The Superintendent,
District Jail,
Nagapattinam District.
- 6.The Inspector of Police,
Vedharanyam Police Station,
Nagapattinam 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 to call for the entire records connected with the order of the second respondent herein concerned in C.O.C. No.42/2022 dated 29.07.2022 and quash the order of detention passed by the second respondent herein against the detenu and direct the respondents herein to produce the body and person of the detenu by name Thiru.Sarabojirajan S/o.Balasubramaniam, male, aged about 52 years, residing at Melakkadu, Koilpathu and Post, Vettaikkaraniruppu Police Station limit, Vedaranyam Taluk, Nagapattinam District, now detained at District Jail, Nagapattinam before this Court and setting him at liberty forthwith.

For Petitioner : Mr.S.Arivazhagan
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 wife of detenu assailing a 'preventive detention order dated 29.07.2022 bearing reference C.O.C.No.42/2022' [hereinafter 'impugned detention order' for the
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sake of convenience and brevity]. To be noted, sixth 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 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.125 of 2022 on the file of Vedaranyam Police Station for alleged offences under Section 8(c) r/w 20(b) (ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual



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matrix or be detained further by facts.

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4. Mr.S.Arivazhagan, 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 21.04.2022 but the impugned detention order has been made only on 29.07.2022.

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 State Additional Public Prosecutor is unacceptable.



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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 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(a). 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**



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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.

8(b). To be noted, in this captioned matter, the co-accused in the ground case was also clamped with preventive detention order, that co-accused challenged the preventive detention order in H.C.P.No.1656 of 2022 and the same was allowed by this Bench in and by an order dated 13.03.2023 which is reported vide Neutral Citation of Madras High Court being **2023:MHC:1087 (E.Kalaivani Vs. State of Tamil Nadu and Others).**

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.



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Impugned detention order dated 29.07.2022 bearing reference C.O.C.No.42/2022 made by the second respondent is set aside and the detenu Thiru.Sarabojirajan, male, aged 52 years, son of Thiru.Balasubramanian 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, Tiruchirappalli.

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
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- 5.The Superintendent,

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District Jail, Nagapattinam District.

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

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6.The Inspector of Police,
Vedharanyam Police Station,
Nagapattinam District.

7.The Public Prosecutor,
High Court, Madras.

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