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H.C.P.No.2317 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.2317 of 2022

K.Elavarasi
W/o.Kalai Selvan @ Aavi Selvan

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The District Collector and District Magistrate
Nagapattinam
Nagapattinam District.
3. The Superintendent of Police
Nagapattinam
Nagapattinam District.
4. The Superintendent of Prison
Central Prison
Trichy.
5. The Inspector of Police

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Velipalayam Police Station
Nagapattinam.

.. 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 records in relating to the order of detention passed by 2nd respondent dated 31.07.2022 in C.O.C.No.40/2022 against the petitioner's husband Aviselvam @ Kalaiselvan, s/o.Ponnaiyan, aged about 40 years who is confined at Central Prison, Trichy and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner	:	Ms.S.Sumaya Merin
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 wife of the detenu assailing a 'preventive detention order dated 31.07.2022 bearing reference C.O.C.No.40/2022' [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 the impugned detention order has been made by



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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. This solitary case which is the sole substratum of the impugned detention order is Crime No.191 of 2022 on the file of Velipalayam Police Station for the alleged offences under Sections 8(c), 20(b)(ii)(C) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] and Section 25(1-A) of Arms Act, 1959. 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.

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4. Ms.S.Sumaya Merin, learned counsel on record 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 arrest in the ground case is 28.04.2022 but the impugned detention order has been made only on 31.07.2022.

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 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



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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 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



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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. 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 31.07.2022 bearing reference C.O.C.No.40/2022 made by the second respondent is set aside and the detenu Thiru.Aviselvam @ Kalaiselvam, aged 40 years, son of Thiru.Ponnaiyan, 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.)

(N.A.V.,J.)

23.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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To

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6. The Public Prosecutor
High Court, Madras.



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