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H.C.P.No.2312 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2312 of 2022

Tmt.H.Viji
W/o.Harikrishnan

... Petitioner
Mother of the detenu

Vs.

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai - 600 007
3. The Superintendent
Central Prison
Puzhal, Chennai – 600 066
4. The Inspector of Police
H-5 Washermanpet
Chennai

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the order of detention passed by the second respondent herein in 240/BCDFGISSSV/2022 DATED 04.08.2022 and to quash the same and consequently direct the respondent to produce the detenu my son Thiru.Barath @ Akash, aged 21 years, son of Harikrishnan now confined in Central Prison, Puzhal, Chennai before this Court and thereafter set him at liberty.

For Petitioner : Mr.N.Nishar Ahamed

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 mother of the detenu assailing a 'preventive detention order dated 04.08.2022 bearing reference 240/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth 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 are four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.160 of 2022 on the file of H3, Tondiarpet Police Station for alleged offences under Sections 8(c) read with Section 22(C), 29(1) of NDPS Act 1985 and Section 77 of Juvenile Justice (Care & Protection of Children) Act, 2015 . 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.N.Nishar Ahamed, learned 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 05.05.2022 but the impugned detention order has been made only on 04.08.2022.

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



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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. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.08.2022 bearing reference 240/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Barath @ Akash, aged 21 years, son of Thiru.Harikrishnan, 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.)

18.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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Madras High Court, Chennai



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M.NIRMAL KUMAR, J.,

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