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H.C.P.No.2281 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2281 of 2022

S.Bakiyavathi
W/o.Suresh

... Petitioner/Cousin sister of Detenu

Vs.

- 1.The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
New Delhi – 110 001.
- 2.The Principal Secretary to Government,
Food and Consumer Protection Department,
IInd Floor, Namakkal Kavingnar Maaligai,
Secretariat, Chennai – 600 009.
- 3.The District Collector and
District Magistrate of Vellore,
Vellore District.



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4.The Superintendent of Police,
Vellore District,
Vellore.

5.The Superintendent of Prison,
Central Prison, Vellore,
Vellore District.

6.The Inspector of Police,
Civil Supply Crime Investigation Department,
Vellore, Vellore District.

.. 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 in connection with the order of detention passed by the 3rd respondent in his office Ref.C3.D.O.No.96/2022 dated 30.09.2022 against the petitioner's cousin brother namely Thiru.Vadivel S/o Doss aged about 43 years at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the detenue before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate



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ORDER

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[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by cousin sister of detenu assailing a 'preventive detention order dated 30.09.2022 bearing reference C3.D.O.No.96/2022' [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.

2. Impugned detention order has been made branding the detenu as a 'Black Marketeer' under the provisions of 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980)' [hereinafter 'Black Marketing and EC Act' for the sake of convenience and clarity].

3. There are one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.196 of 2022 on the file of Civil Supplies CID, Vellore Unit for alleged offences

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under Sections 6(4) of TNSC (RDCS) Order, 1982 read with 7(1)(a)(ii) of E.C. Act, 1955. 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.E.Kannadasan, 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 six respondents are before us.

5. Notwithstanding very many averments in the support affidavit 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 21.08.2022 but the impugned detention order has been made only on 30.09.2022.

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



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circumstances of the case and nature of ground case, we find that this explanation is not convincing. Therefore, we have no difficulty in saying that the ground case which is the substratum of the impugned detention order has become stale.

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. Therefore, the impugned detention order is



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vitiated and the same is liable to be dislodged.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.09.2022 bearing reference C3.D.O.No.96/2022 made by the third respondent is set aside and the detenu Thiru.Vadivel, aged 43 years, son of Thiru.Dass, now detained in Central Prison, Vellore is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S.,J.) (M.N.K.,J.)
07.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

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