



H.C.P.No.2323 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.2323 of 2022

Kavitha

..Petitioner /
Wife of the detenu

Vs.

1. The State of Tamilnadu
Represented by Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Magistrate and District Collector
Erode District
Erode
3. The Superintendent of Police
Erode District
Erode
4. The Inspector of Police
PEW Erode Town Police Station
Erode District
5. The Superintendent of Prison

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Central Prison, Coimbatore
Coimbatore

... 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 relating to the detention order dated 15.10.2022 passed by the second respondent in his proceedings No.Cr.M.P.No.37/GOONDA/2022 C1 and quash the same and direct the respondents herein to produce the petitioner's husband namely Mukesh, son of Ganapathi aged about 32 years, who is presently undergoing detention in the Central Prison, Coimbatore as Bootlegger before this Court and set him at liberty.

For Petitioner : Mr.M.Vinoth

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 15.10.2022 bearing reference Cr.M.P.No.37/BOOTLEGGERS/2022 C1' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and

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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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are five adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.884 of 2022 on the file of Erode Town Prohibition Enforcement Wing for alleged offences under Section 4(1)(a), 4(1-A), 4(1)(b), 4(1)(g) and 4(1)(h) of Tamil Nadu Prohibition Act and Rules 7 Tamil Nadu Rectified Spirit Rules, 2000 and Sections 420, 467, 468 and 471 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] . 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.Mr.M.Vinoth, 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.

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 12.09.2022 but the impugned detention order has been made only on 15.10.2022.

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



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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. 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. We are also informed without any disputation by both sides that co-accused Annachi @ Veerapandi in the ground case was also clamped with an identical preventive detention order, co-accused assailed the same vide H.C.P.No.2327 of 2022 and it was allowed by this Court on the same point yesterday (17.04.2023).

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 15.10.2022 bearing reference Cr.M.P.No.37/BOOTLEGGERS/2022 C1 made by the second respondent is set aside and the detenu Thiru.Mukesh, aged 32 years, son of Thiru.Ganapathi, 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.)

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Index : Yes/No

Speaking/No speaking order

Neutral Citation : Yes /No

gpa

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

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To

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1. The Secretary to Government
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Fort St.George
Chennai – 600 009
2. The District Magistrate and District Collector
Erode District
Erode
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Madras High Court, Chennai



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and
M.NIRMAL KUMAR, J.,

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