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H.C.P.No.2539 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2539 of 2022

Iyyammal
W/o.Venkatesan

.. Petitioner/Sister of Detenu

Vs.

1.State of Tamil Nadu, represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai.

2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.

3.Superintendent of Prison,
Central Prison, Puzhal-II,
Puzhal, Chennai.

4.The Inspector of Police,
P-4, Basin Bridge Police Station,
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 to call for the records in Memo No.416/BCDFGISSSV/2022 passed by the 2nd respondent on 10.11.2022, on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's brother Premkumar, S/o. Gajapathy aged about 37 years, before this Court, who now detained in Central Prison, Puzhal-II and set him at liberty.

For Petitioner : Mr.A.Elumalai

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 sister of detenu assailing a 'preventive detention order dated 10.11.2022 bearing reference 416/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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.481 of 2022 on the file of P-4 Basin Bridge Police Station for alleged offences under Sections 147, 148, 294(b), 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 147, 148, 294(b), 302 and 506(ii) of IPC. 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.A.Elumalai, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submits that 'live and proximate link'



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between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 01.10.2022 but the impugned detention order has been made only on 10.11.2022.

6. Mr.E.Raj Thilak, 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 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.



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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 **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.



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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.11.2022 bearing reference 416/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Premkumar, aged 37 years, son of Thiru.Gajapathy, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
24.04.2023

Index : Yes
Speaking
Neutral Citation : Yes
rsi

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



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To

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- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
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Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal-II,
Puzhal, Chennai.
- 4.The Inspector of Police,
P-4, Basin Bridge Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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

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