



H.C.P.No.2574 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**  
and

**THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN**  
**THILAKAVADI**

H.C.P.No.2574 of 2022

K.Malar

Wife of Krishnamoorthi

..

Petitioner /

Mother of the detenu

Vs.

1. State of Tamil Nadu  
Rep. By The Principal Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai – 600 009
2. The District Collector and  
District Magistrate  
O/o. The District Collector and  
District Magistrate  
Mayiladuthurai District  
Mayiladuthurai
3. The Superintendent of Police  
Mayiladuthurai District  
Mayiladuthurai

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4. The Superintendent  
Central Prison  
Tiruchirappalli

5. The Inspector of Police  
Prohibition Enforcement Wing, Sirkazhi  
(i/c) Prohibition Enforcement Wing  
Mayiladuthurai  
Mayiladuthurai District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records in connection with the detention order passed in C.O.C.No.54/2022 dated 23.11.2022 on the file of the 2<sup>nd</sup> respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Vijay, son of Krishnamoorthi, male, aged 30 years, who is detained in Central Prison, Thiruchirappalli before this Court and set him at liberty.

For Petitioner : Ms.S.Vasavi Sridevi

For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
Assisted by  
Mr.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 mother of detenu assailing a 'preventive detention order dated 23.11.2022 bearing reference C.O.C.No.54 of 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 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive

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detention order is Crime No.971 of 2022 on the file of Mayiladuthurai Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) and 4(1)(i) read with Section 4(1-A) of Tamil Nadu Prohibition Act, 1937. 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. Ms.S.Vasavi Sridevi, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.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 26.09.2022 but the impugned detention order has been made only on 23.11.2022.

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.



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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.

8. To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs. The Principal Secretary to Government and others** [Neutral Citation of Madras High Court being **2023/MHC/334**], **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** [Neutral Citation of Madras High Court being **2023/MHC/733**], **Sangeetha Vs. The Secretary**



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*to the Government and others* [Neutral Citation of Madras High Court being **2023:MHC:1110**], *N.Anitha Vs. The Secretary to Government and others* [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 23.11.2022 bearing reference C.O.C.No.54 of 2022 made by the second respondent is set aside and the detenu Thiru.Vijay, aged 30 years, son of Thiru.Krishnamoorthi 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.)

(K.G.T.,J.)

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Index : Yes

Speaking order

Neutral Citation : Yes

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

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To

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Home, Prohibition and Excise Department  
Secretariat, Chennai – 600 009
2. The District Collector and  
District Magistrate  
O/o. The District Collector and  
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**and**  
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