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H.C.P.No.2622 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2622 of 2022

Sridhar

S/o.Jevanandam

.. Petitioner

Vs.

1. The State rep. by
Secretary to Government (Home)
Prohibition and Excise Department
Fort St.George, Chennai – 600 009
2. The District Collector and Magistrate
Vellore
Vellore District
3. The Superintendent of Police
Vellore
Vellore District
4. The Superintendent of Prisons
Office of the Superintendent of Prisons
Central Prison, Vellore
Vellore District

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5. The Inspector of Police
Vellore Prohibition Enforcement Wing
Vellore 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 pursuant to the detention order issued by the 2nd respondent vide C3/D.O.No.102/2022 dated 25.10.2022 and set aside the same and consequently direct the respondent to produce the detenu Umapathi, son of Ravikumar, aged about 31 years, sister's son of the petitioner, now confined at Central Prison, Vellore, Vellore District before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.M.Sathish Kumar
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.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 the uncle of detenu assailing a 'preventive detention order dated 25.10.2022 bearing reference C3/D.O.No.102/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is



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the detaining authority as impugned detention order has been made by the 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 three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.221 of 2022 on the file of Virinchipuram Police Station for alleged offences under Section 4(1)(aaa) and 4(1-A)ii of Tamilnadu Prohibition Act, 1937 read with Section 328 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.Sathish Kumar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor (assisted by learned counsel Mr.Sylvester John), 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 13.09.2022 but the impugned detention order has been made only on 25.10.2022.

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



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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 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**]



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and a series of other orders in HCP cases.

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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.10.2022 bearing reference C3/D.O.No.102/2022 made by the second respondent is set aside and the detenu Umapathi, son of Ravikumar, aged about 31 years 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, Vellore



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To

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5. The Inspector of Police
Vellore Prohibition Enforcement Wing
Vellore District
6. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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