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H.C.P.No.2614 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.2614 OF 2022

Raju

.. Petitioner

Vs.

- 1.The Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The District Magistrate and District Collector
Office of the District Magistrate
and District Collector
Thiruvallur District.
- 3.The Superintendent of Police
Office of the Superintendent of Police
Thiruvallur District.
- 4.The Superintendent of Prison
Central Prison at Puzhal – II
Chennai – 600 066.



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5.The Inspector of Police
Kanakammachatram Police Station
Thiruvallur District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records in Detention Order in BCDFGISSSV No.54/2022 dated 07.11.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the detenu Raju S/o.Leyon aged 36 years now confined in Central Prison at Puzhal before this Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi
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 the detenu assailing a 'preventive detention order dated 07.11.2022 bearing reference BCDFGISSSV No.54/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.235 of 2022 on the file of Kanakamachattram Police Station for alleged offences under Sections 8(c), 20(b)(ii)(C) and 29(1) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] and Section 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter



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'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.

4.Ms.R.Subadra Devi, learned counsel on record 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' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 14.09.2022 but the impugned detention order has been made only on 07.11.2022.

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.



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7.We remind ourselves of **Sushanta Kumar Banik's** case

WEB COPY [**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. 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**,



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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.Learned Public Prosecutor submits that the ground case being C.C.No.53 of 2023 on the file of I Additional Special Court under NDPS Act, Chennai, pertains to commercial quantity of Ganja, charge sheet has been filed within time and the case is proceeding in the Trial Court. If the detenu seeks bail in the trial Court, we make it clear that the learned Trial Court Judge shall deal with the same on its own merits and in accordance with law uninfluenced by this order as this order is only pertaining to a HCP legal drill for testing the impugned preventive detention order, which turns on public order whereas the legal drill in the Trial Court is one that turns on law and order. It is in this context that we deem it appropriate to make this

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clarification though it is obvious.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.11.2022 bearing reference BCDFGISSSV No.54/2022 made by the second respondent is set aside and the detenu Thiru Raju, aged 36 years, son of Thiru. Leyon, 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.)

(R.S.V., J.)

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Index : Yes
Speaking
Neutral Citation : Yes
TK

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

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- 6.The Public Prosecutor
High Court of Madras.



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