



H.C.P.No.2620 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2620 of 2022

Nagarani

W/o.Chandiran

...

Petitioner /Wife of
the detenu

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tirupathur District,
Tirupathur.

3.The Superintendent of Police,
Tirupathur District,
Tirupathur.

4.The Superintendent of Prison,
Central Prison,
Vellore, Vellore District.



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5. The Inspector of Police,
Prohibition Enforcement Wing,
Vaniyambadi, Tirupathur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 01.12.2022 in his office Ref.C3.D.O.No.58/2022 against the petitioner's husband, by name, Thiru. Chandiran, S/o.Sundaram, aged about 52 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 wife of the detenu assailing a 'preventive detention order dated 01.12.2022 bearing reference C3/D.O.No.58/2022' [hereinafter 'impugned preventive 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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.546 of 2022 on the file of Vaniyambadi Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1)(h), 4(1-A)ii of 'Tamil Nadu Prohibition Act, 1937' ['TNP Act' for brevity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



WEB COURT

4. Mr.D.Balaji, 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' between the grounds of detention and purpose of detention has snapped as detinue was arrested on 28.10.2022 but the impugned preventive detention order has been made only on 01.12.2022.

6. Mr.E.Raj Thilak, 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 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**



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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.

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.12.2022 bearing reference C3/D.O.No.58/2022 made by the second respondent is set aside and the detenu Thiru.Chandiran, aged 52 years, Son of Thiru.Sundaram 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
gm

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



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To

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- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirupathur District,
Tirupathur.
- 3.The Superintendent of Police,
Tirupathur District,
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- 4.The Superintendent of Prison,
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- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Vaniyambadi, Tirupathur District.
- 6.The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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