



H.C.P.No.2655 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr. JUSTICE R.SAKTHIVEL

H.C.P.No.2655 of 2022

R.Sathiyavani

.. Petitioner
Mother of the detenu

Vs.

1. The Chief Secretary to Government of Puducherry
[Home Department]
Puducherry
2. The District Magistrate-cum-Authorised Officer
Office of the District Magistrate
Government of Puducherry
Puducherry
3. The Superintendent of Police
(West) Puducherry
Puducherry
4. The Inspector of Police
Thirubhuvanai Police Station
Puducherry
5. The Chief Superintendent of Jail
Central Prison

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Kalapet, Puducherry

... 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 relating to the order made in No.10/DM/RO/D2/PPASAA/2022, dated 22.11.2022 detaining the detenu under sub-section (1) of Section 3 of the Puducherry Prevention of Anti-Social Activities Act, 2008 as “Dangerous Person” and quash the same and direct the respondents to produce the detenu Mugesh, son of Rathinavel, male, aged about 22 years who is detained in Central Prison, Kalapet, Puducherry before this Court and set him at liberty,

For Petitioner : Mr.A.T.Anbu Kumar

For Respondents : Mr.K.S.Mohandass
Public Prosecutor (Puducherry)

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 mother detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference 10/DM/RO/D2/PPASAA/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 sub-section (2) of

Section 3 of the 'Puducherry Prevention of Antisocial Activities Act, 2008 (Act 10 of 2010)' [hereinafter 'said Act' for the sake of brevity] read with Order issued by the Government of Puducherry vide G.O.Ms.No.41 dated 6th September 2022 of the Home Department, Puducherry on the premise that the detenu is a 'Dangerous Person' within the meaning of sub-section (1) of Section 3 of said Act.

3. There are five adverse cases and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.96 of 2022 on the file of Thirubuvanai Police Station, for alleged offences under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered to 302, 109 read with 302 IPC, 212 read with 302 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.T.Anbu Kumar, learned counsel representing counsel on record for petitioner and Mr.K.S.Mohandass, learned Public Prosecutor (Puducherry), for all respondents are before us.



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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 25.07.2022 but the impugned detention order has been made only on 22.11.2022.

6. Mr.K.S.Mohandass, learned 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



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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**] 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 22.11.2022 bearing reference 10/DM/RO/D2/PPASAA/2022, made by the second respondent is set aside and the detenu Mr. Mugesh, aged about 22 years, son of Rathinavel, 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.)

14.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

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



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To

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