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H.C.P.No.2683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

Coram

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

H.C.P.No.2683 of 2022

Selvaraj

.. Petitioner

VS

- 1.State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate
of Tirupathur District, Tirupathur.
- 3.The Superintendent of Police,
Tirupathur District, Tirupathur.
- 4.The Inspector of Police,
Omerabad Police Station,
Omerabad, Thirupathur District.
- 5.The Superintendent,
Central Prison, Vellore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to petitioner's brother's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 09.12.2022 on the file of the second respondent herein made in proceedings in C3/D.O.No.59/2022, quash the same as illegal and consequently



H.C.P.No.2683 of 2022

direct the respondents herein to produce petitioner's brother namely Sathishkumar, aged 35 years, son of Rajendiran, before this Court and set him at liberty, now the petitioner's brother detained at Central Prison, Vellore.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.C.C.Chellappan

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 brother of the detenu assailing a 'preventive detention order dated 09.12.2022 bearing reference C3/D.O.No.59/2022' [hereinafter 'impugned preventive 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 preventive detention order has been made by second respondent.

2. Impugned preventive 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-



H.C.P.No.2683 of 2022

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. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.350 of 2022 on the file of Omerabad Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of Tamil Nadu Prohibition Act r/w 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter '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. Mr.M.Mohamed Saifulla, learned counsel representing the 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 remand in the ground case is



H.C.P.No.2683 of 2022

12.10.2022 but the impugned detention order has been made only on 09.12.2022.

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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 for the same. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public 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.



H.C.P.No.2683 of 2022

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** 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.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.12.2022 bearing reference



H.C.P.No.2683 of 2022

C3/D.O.No.59/2022 made by the second respondent is set aside and the detenu Thiru.Sathishkumar, aged 35 years, son of Thiru.Rajendiran, 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.)
27.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate
of Tirupathur District, Tirupathur.
- 3.The Superintendent of Police,
Tirupathur District, Tirupathur.
- 4.The Inspector of Police,
Omerabad Police Station,
Omerabad, Thirupathur District.
- 5.The Superintendent,
Central Prison, Vellore.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.2683 of 2022

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

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H.C.P.No.2683 of 2022

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