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HCP No.169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.169 of 2023

Govindammal
Wife of Kannan

.. Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its Principal Secretary to Government
Home Prohibition and Excise Department
Fort St.George
Chennai-600 009.
 2. The District Magistrate and District Collector
Salem District
Salem
 3. The Superintendent of Police
Salem District
Salem
 4. The Superintendent of Central Prison
Salem
 5. The Inspector of Police
Mettur Police Station
Salem District
- ..Respondents



HCP No.169 of 2023

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 detention order dated 05.12.2022 made in detention order in C.M.P.No.32/Goonda/C2/2022 under Section 3(1) of Tamil Nadu Act 14/1982 as “Goonda” passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body of the detenu Thiru.Moorthi, son of Kannan, aged 33 years, who has been detained in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.M.Senthilkumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 08.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 30.01.2023 inter alia assailing a detention order dated 05.12.2022 bearing reference C.M.P.No.32/GOONDA/C2/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.



HCP No.169 of 2023

WEB COPY

2. Mother of the detenu is the petitioner.

3. Mr.M.Senthilkumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.169 of 2022 on the file of Mettur Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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].

5. The detention order has been assailed inter alia on the ground that some of the pages in the booklet furnished to the detenu are not legible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly. '

2. The aforementioned order made in the 08.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the



HCP No.169 of 2023

short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.169 of 2022 on the file of Mettur Police Station for an alleged offence under Section 302 IPC. 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.

4. Mr.M.Senthilkumar, 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 the date of remand in the ground case is 25.10.2022 but the impugned detention order has been made only on 05.12.2022.

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



HCP No.169 of 2023

Additional Public Prosecutor is unacceptable.

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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*



HCP No.169 of 2023

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 05.12.2022 bearing reference C.M.P.No.32/Goonda/C2/2022 made by the second respondent is set aside and the detenu Thiru.Moorthi, aged 33 years, son of Thiru.Kannan, 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.)
30.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



HCP No.169 of 2023

To

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High Court, Madras.



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HCP No.169 of 2023

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

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H.C.P.No.169 of 2023

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