



H.C.P.No.409 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.409 of 2023

Vanumamalai
S/o.Subbaiah

.. Petitioner/
Brother of detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Commissioner of Police/
Detaining Authority
Tiruppur City
Tiruppur
3. The Superintendent
Central Prison
Coimbatore
4. State rep. By
The Inspector of Police
Tiruppur North Police Station
Tiruppur District

... Respondents



H.C.P.No.409 of 2023

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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 in connection with the order of detention passed by the 2nd respondent dated 12.08.2022 in C. No.60/G/IS/Tiruppur City/2022 against the petitioner brother Esakki Pandi, male, 22 years, son of Subbaiya, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	:	Mr.A.Saranraj
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John Advocate

ORDER

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

When the matter came up for admission on 21.03.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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H.C.P.No.409 of 2023

H.C.P.No.409 of 2023

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**M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,**

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 09.03.2023 *inter alia* assailing a detention order dated 12.08.2022 bearing Ref. C.No.60/G/15/Tiruppur City/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Brother of the detenu is the petitioner.

3. Mr.A.Saranraj, 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 offences under Sections 452, 342, 392 and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.641 of 2022 on the file of North Police Station, Tiruppur City.

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

Page No.1/3



H.C.P.No.409 of 2023

WEB COPY

H.C.P.No.409 of 2023

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 the remand order was not properly translated in the language which the detenu is conversant with, 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.Muniyappa, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

 



H.C.P.No.409 of 2023

2. Mr. A.Saranraj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

3. Though in the admission Board, learned counsel projected his case on the ground that remand order was not properly translated in the language which the detenu is conversant with, today in the final hearing learned counsel projected his campaign against the impugned detention order on the point of 'live and proximate link' between the grounds of detention and purpose of detention had snapped, as detenu was arrested on 10.07.2022 but the impugned detention order has been made only on 12.08.2022.

4. Mr.R.Muniyapparaj, 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 Prosecutor is unacceptable.

5. We remind ourselves of ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw***



H.C.P.No.409 of 2023

(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.

6. 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



H.C.P.No.409 of 2023

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.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.08.2022 bearing reference C.No.60/G/IS/Tiruppur City/2022 made by the second respondent is set aside and the detenu Thiru.Esakki Pandi, aged 22 years, son of Thiru.Subbaiya 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.) (M.N.K.,J.)
29.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

gpa

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



H.C.P.No.409 of 2023

To

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1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Commissioner of Police/
Detaining Authority
Tiruppur City
Tiruppur
3. The Superintendent
Central Prison
Coimbatore
4. The Inspector of Police
Tiruppur North Police Station
Tiruppur District
5. The Public Prosecutor
Madras High Court, Chennai



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H.C.P.No.409 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

gpa

H.C.P.No.409 of 2023

29.03.2023

Page Nos.9/9