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H.C.P.No.583 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.583 of 2022

Mrs.Sudha

W/o.Thiyyagu @ Thiyyagarajan

..

Petitioner/
Wife of detenu

Vs.

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate of Kancheepuram
Kancheepuram District
Kanchipuram
3. The Superintendent of Police
Kanchipuram
Kanchipuram District
4. The Superintendent
Central Prison
Playankottai
Tirunelveli District

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5. State Rep. By
The Inspector of Police
Vishnu Kanchi Police Station
Kanchipuram

.. Respondents

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 second respondent dated 16.03.2022 in Memo No. B.C.D.F.G.I.S.S.S.V.No.10/2022 against the petitioner husband Thiyaagu @ Thiagarajan, M/33 years, s/o.Kumar, who is confined at Central Prison, Palayankottai 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 Mr.M.Mahendran

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 wife of detenu assailing a 'preventive detention order dated 16.03.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.10/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.1753 of 2021 on the file of Vishnu Kanchi Police Station for alleged offences under Sections 294(b), 427, 392, 397, 307 and 506(ii) 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.A.Saranraj, learned counsel representing Mr.M.Mahendran,



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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 02.02.2022 but the impugned detention order has been made only on 16.03.2022.

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 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



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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 Bench in **Gomathi Vs.The Principal Secretary to Government and others** reported in **2023/MHC/334**, **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported in **2023/MHC/733** and series of other HCP matters.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned



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detention order dated 16.03.2022 bearing reference B.C.D.F.G.I.S.S.S.V

No.10 of 2022 made by the second respondent is set aside and the detenu

Thiru.Thiyagu @ Thiyagarajan, male, aged 33 years, son of Thiru. Kumar 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.)

13.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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6. The Public Prosecutor
High Court, Madras.



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