



H.C.P.No.680 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAGAVADI

H.C.P.No.680 of 2023

Ganesan
Son of Rengasami

..Petitioner /
Detenu's father

Vs.

1. State of Tamilnadu
Rep. By the Secretary to Government
Home, Prohibition and Excise Department
St.George Fort
Chennai – 600 009
2. The District Collector &
District Magistrate
Tiruvarur District
3. The Superintendent of Police
Tiruvarur District
Tamilnadu – 610 004
4. The Superintendent of Prison
Central Prison, Trichy
Chennai – 600 020

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5. Inspector of Police
Tiruvarur Town Police Station
Tiruvarur District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in relating to the detention order dated 19.09.2022 made in detention order C.O.C.No.28 of 2022 passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son Urulai Bala @ Balakumar, son of Ganesan, aged about 29 years branded as Goonda and now confined in Central Prison, Trichy District before this Court and set him at liberty.

For Petitioner	:	Mr.C.Mohan Raj
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.M.Sylvester John Advocate

ORDER

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

When the matter came up for admission on 26.04.2023, this Bench made an order and a scanned reproduction of the same is as follows:

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

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

Captioned Habeas Corpus Petition has been filed in this Court on 17.04.2023 *inter alia* assailing a detention order dated 19.09.2022 bearing reference C.O.C.No.28/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity] To be noted, fifth respondent is the Sponsoring Authority.

2. Father of detenu is the petitioner

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 392 and 506(ii) of The Indian Penal Code (45 of 1860)' [hereinafter TPC' for the sake of convenience and clarity] in Crime No.230 of 2022 on the file of Tiruvannamalai Town Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(i) of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law

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<https://www.mhc.tn.gov.in/judis>



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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 grounds booklet furnished to the detenu are illegible 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.

[M.S.J.] [M.N.K.J.]
26.04.2023

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WEB COPY 2.Mr.C.Mohan Raj, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, for all respondents are before us.

3. 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 03.08.2022 but the impugned detention order has been made only on 19.09.2022.

4. Mr.R.Muniyapparaj, learned State Additional 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.

5. 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.

6. 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.



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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 19.09.2022 bearing reference C.O.C.No.28/2022 made by the second respondent is set aside and the detenu Thiru.Urulai Bala @ Balakumar, aged 29 years, son of Thiru.Ganesan 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.)

(K.G.T.,J.)

09.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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Tiruvarur District
6. The Public Prosecutor
Madras High Court, Chennai



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K.GOVINDARAJAN THILAGAVADI, J.,

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