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HCP No.839 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**
and
THE HON'BLE Mr.JUSTICE **M.NIRMAL KUMAR**

H.C.P. No.839 of 2022

V.Meena

... Petitioner (wife of detenu)

-Vs-

1. State of Tamil Nadu rep. By
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector/District Magistrate,
District Collector Office,
Thiruvannamalai,
Thiruvannamalai District.
3. The Superintendent of Police,
Thiruvannamalai,
Thiruvannamalai District.
4. The Superintendent of Central Prison,
Central Prison,
Vellore District.
5. Inspector of Police,
Dusi Police Station,
Thiruvannamalai District.

... Respondents



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Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the Detention order No.31/2022-C2 dated 07.04.2022 passed by the 2nd respondent and quash the same and direct the respondents to produce the detainee Vinothkumar, Son of Perumal now confined at Central Prison, Puzhal and set him at liberty.

For Petitioner .. Mr.D.Krishnamoorthy

For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity] has been filed in this Court on 10.05.2022 assailing a Detention Order dated 07.04.2022 bearing reference D.O.No.31/2022-C2 made by 'second respondent i.e., jurisdictional District Collector' [hereinafter 'detaining authority' for the sake of convenience and clarity]'. This 'Detention Order' shall hereinafter be referred to as 'impugned Detention Order' for the sake of convenience and clarity.



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2. Impugned Detention Order has been made by second respondent on the premise that the spouse of the petitioner is a GOONDA within the meaning of 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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. Notwithstanding very many averments made in the affidavit filed in support of this petition, Mr.D.Krishnamoorthy, learned counsel raised one pivotal point and that is, delay in making the impugned detention order. Delay in making the impugned detention order put in legal parlance translates as snapping of 'live and proximate link' between the grounds and purpose of detention. In the case on hand, petitioner was remanded to judicial custody on 15.02.2022 and remains incarcerated from that day but impugned detention order was made only on 07.04.2022 after 53 days. This has been raised as ground no.5 and the same reads as follows:

'5. The detenue was remanded on 15.02.2022 and the detention order was passed only on 07.04.2022 with an



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inordinate delay of 53 days.'

4. Aforementioned ground no.5 raised by the petitioner has been met by State in counter affidavit in paragraph 15, which reads as follows:

'15. I submits that the averments in Para 5 of the grounds of the affidavit, it is not correct to state that the ground case in Crime No.83/2022 was registered on 14/02/2021 by Dusi Police Station, Thiruvannamalai District and it is not correct to state that there is delay of 53 days in passing the detention order. Further, it cannot be contended that due to delay, the detention order is liable to be set aside. Further, T.N.Act 14/1982 does not prescribe any time limit for passing the detention order. Hence, the contrary averments are not correct.'

5. We have carefully considered the stated position of the petitioner seeking writ of habeas corpus and State.

6. Before we allude to the stated positions, we remind ourselves that legal position with regard to the live and proximate link qua grounds and purpose of detention has been elucidatively explained by Hon'ble Supreme Court in **Banik's** case being **Sushanta Kumar Banik Vs. State of Tripura & Ors.** reported in **2022 SCC OnLine SC 1333**, relevant paragraph is paragraph



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21 and the same reads as follows:

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'21. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.'

7. To be noted, the above **Banik's** case has also been reported in **LiveLaw** in 2022 **LiveLaw (SC) 813**. Relevant paragraph is paragraph 20 in **LiveLaw** report.



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8. The aforementioned elucidation makes it clear that there are two facets to live and proximate link snapping. One is unreasonable delay and the other is unexplained delay. In the case on hand, from the rival submissions, it is clear that the delay remains unexplained. On this one point, applying **Banik's** case law principle, we are inclined to set aside the impugned detention order as it stands legally dislodged by being hit by live and proximate link snapping point.

9. Ergo, the sequitur is, captioned HCP is allowed and the impugned Detention Order dated 07.04.2022, bearing reference D.O.No.31/2022-C2 made by the second respondent is set aside and detenu Vinothkumar, son of Perumal is directed to set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
30.01.2023

Index:Yes/No

Neutral Citation : Yes/No

kmi

Note to Office: Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore.

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To

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1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector/District Magistrate,
District Collector Office,
Thiruvannamalai,
Thiruvannamalai District.
3. The Superintendent of Police,
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and
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