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H.C.P.No.1381 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1381 of 2022

D.Mala

W/o.Dhanushkodi

..

Petitioner

Vs.

1. The Secretary
Prohibition and Excise Department (Home)
Government of Tamil Nadu
Fort St.George
Chennai-9.
2. The District Collector and District Magistrate
Nagapattinam
Nagapattinam District.
3. The Superintendent of Central Prison
Trichy Central Prison
Trichy.
4. The Superintendent of Police
Nagapattinam District.



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5. The Inspector of Police
Kilvelur Police Station
Nagapattinam District.

.. 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 of the 2nd respondent in C.O.C.No.342022 dated 11.06.2022 and set aside the same and direct the 2nd respondent to produce the detenu Vandu @ Dahnaraj, Son of Dhanushkodi aged about 21 years, now confined in Central Prison, Trichy before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Vellidoss representing Mr.Veerapillai Ramesh
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned HCP has been filed in this Court on 13.07.2022 assailing a 'detention order dated 11.06.2022 bearing reference No.C.O.C.No.34/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., jurisdictional District Collector [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent i.e., jurisdictional Inspector of Police is the Sponsoring Authority.

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2. Mr.S.Vellidoss, learned counsel on record for petitioner (to be noted, spouse of the detenu is the petitioner before us) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the five respondents are before us.

3. Suffice to say that the impugned detention order has been made by the Detaining Authority on the premise that the detenu 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

4. The Ground case is Crime No.167 of 2022 for alleged offences under Section 399 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 25(1A) of Arms Act, 1959. To be noted, ground case is on the file of the fifth respondent who is



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the Sponsoring Authority. It may not be necessary to be detained further by facts as the learned counsel for the petitioner points out that there is delay in making the impugned detention order and in this regard learned counsel draws our attention to Ground (IV) of the support affidavit which reads as follows:

'IV. It is submitted that the detenu was arrested on 19.04.2022 and the detention order has been passed almost after the lapse of two months on 11.06.2022. Therefore, the apprehension of the respondent is baseless and the impugned detention order is liable to be set-aside.'

Aforementioned ground (IV) has been met by State in the counter affidavit dated 23.11.2022 and relevant portion in the counter affidavit reads as follows:

'Ground IV : It is respectfully submitted that the averments of the petitioner herein in grounds 'IV' of the affidavit are false since the detention order had been passed within the time limit prescribed. There was no delay in passing the detention order as claimed by the petitioner.'



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5. As regards delay in making the impugned detention order, to put it in legal parlance, it is a point which turns on 'live and proximate link between the grounds of detention and purpose of detention snapping', we draw inspiration from **Banik** case law [*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, 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 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'. In the light of the manner in which the ground (IV) has been articulated in the support affidavit and the manner in which this ground (IV) has been met by the State in the counter affidavit (to be noted, most relevant portions are extracted and reproduced elsewhere supra in this order) we have no



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difficulty in persuading ourselves to say that the case on hand falls on the category of unexplained delay. We also deem it appropriate to add that there is no prescribed time limit for making the impugned detention order. We deem it appropriate and necessary to make this obtaining position clear owing to the manner in which this point has been met in the counter affidavit. As held by Hon'ble Supreme Court in **Banik** case law, 'live and proximate link' between the grounds of detention and purpose of detention snapping point should be examined on a case to case basis. In the case on hand, there are two adverse cases, one ground case and that ground case is for alleged offences under Section 399 IPC and 25(1A) of Arms Act, 1959.

6. In the light of the narrative thus far, we have no difficulty in persuading ourselves that the impugned detention order made by the Detaining Authority 53 days post remand in the ground case is one where 'live and proximate link between the grounds of detention and purpose of detention' has snapped. To put it differently, the impugned detention order has been made on the basis of a State case.



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

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.06.2022 bearing reference C.O.C.No.34/2022 made by the second respondent is set aside and the detenu Thiru.Vandu @ Dhanaraj, son of Mr.Dhanuskodi is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

9. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

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

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To

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Chennai-9.
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6. The Public Prosecutor
High Court, Madras.

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