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H.C.P.No.1431 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.1431 of 2022

Tharani

W/o.Vijay @ Vellaiyan

.. Petitioner

Vs.

1. The Principal Secretary to Government
Home, Prohibition and Excise (IVI) Dept.,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector
Office of the District Collector, Salem District.
3. The Superintendent of Police
Office of the Superintendent of Police
Salem District.
4. The Superintendent of Prison
Central Prison at Salem,
Hasthampatty, Salem
5. The Inspector of Police
Karumalaikoodal Police Station
Salem District.

.. Respondents

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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 detention order in CMP No.16/GOONDA/C2/2022 dated 18.06.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of husband of petitioner / detenu Vijay @ Vellaiyan, S/o.Ramar aged 25 years now confined in Central Prison at Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi
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 15.07.2022 by spouse of detenu assailing a 'detention order dated 18.06.2022 bearing reference C.M.P.No.16/GOONDA/C2/2022' [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. Ms.R.Subadra Devi, learned counsel on record for petitioner 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 *inter alia* 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. Notwithstanding very many averments in the support affidavit filed in captioned HCP, learned counsel for petitioner projects her argument on one point and that is delay in making the impugned detention order. This argument put it in legal parlance translates into 'live and proximate link between the grounds and purpose of detention has snapped'.



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5. In the case on hand, the ground case is Crime No.78 of 2022 for alleged offences under Sections 147, 148 and 302 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] on the file of the fifth respondent, who is the Sponsoring Authority.

6. The impugned detention order refers to one adverse case. The detenu was remanded to judicial custody in the ground case on 08.04.2022 and the impugned detention order was made on 18.06.2022 i.e., 72 days later.

7. The aforementioned point has been raised by habeas corpus petitioner in ground (vi) of the support affidavit and the same reads as follows:

'vi) That the detenu was arrested on 08.04.2022 and the said detention order was passed on 18.06.2022. The detention order was passed an inordinate delay which amounting to violation of his personal liberty.'

Aforementioned point raised by the petitioner has been met by the State in paragraph (vi) of the counter affidavit dated 09.01.2023 and the



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same reads as follows:

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'vi) It is humbly submitted that, all the averments stated in para No."vi" of the grounds of the affidavit are false and not correct, except the averments pertaining to the date of arrest of the detenu and the date of detention passed. It is further submitted that the order of detention has been passed within the time prescribed by the Act 14/1982 and as such there is no delay and none of the detenue's personal liberty has been violated.'

For discussion and dispositive reasoning qua aforementioned point and counter point we draw inspiration from **Banik's** case i.e., **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, wherein after considering the trajectory the matter took, Hon'ble Supreme Court came to the conclusion that 'live and proximate link between the grounds and purpose of detention snapping' point should be considered on a case to base basis. Elucidation of Hon'ble Supreme Court in **Banik's**



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case brings to light that this point has two facets. One facet is 'unreasonable delay' and other facet is 'unexplained delay'.

8. In the case on hand, we have no difficulty in persuading ourselves to say that the case on hand falls under the latter facet and this is more so, owing to the counter affidavit filed by the State. In this regard, we deem it appropriate to make it clear that the counter affidavit says that the impugned detention order has been made within the 'time prescribed by Act No.14 of 1982'. Therefore, we deem it appropriate to make it clear that no time has been prescribed under Act 14 of 1982. This point has to be examined on a case to case basis as held by Hon'ble Supreme Court in **Banik's** case. Considering the facts and circumstances of the instant case, particularly nature of adverse cases and ground case, we find that the impugned detention order is hit by the vice of 'live and proximate link between the grounds and purpose of detention being snapped'.

9. Be that as it may, learned counsel for petitioner brings to light that co-accused in the ground case i.e., Mr.Lallu @ Lalluprasath, son of



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Mr.Sekar (Late) was also detained vide another preventive detention order and in HCP No.1388 of 2022 filed by the spouse of the detenu in that case, we had set aside the detention order in and by an order dated 25.01.2023. To be noted, this is mentioned only for completion of facts.

10. Before writing concluding paragraph, we also remind ourselves that preventive detention is not a punishment and habeas corpus is a high prerogative writ.

11. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in persuading ourselves to hold that the impugned detention order is hit by the vice of live and proximate link between the grounds and purpose of detention being snapped as already alluded to supra.

12. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 18.06.2022 bearing reference C.M.P.No.16/GOONDA/C2/2022 made by the second respondent is set



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aside and the detenu Thiru.Vijay @ Vellaiyan, son of Mr.Ramar is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

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

(M.S.,J.)

(M.N.K.,J.)

06.02.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
mk

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

To

1. The Principal Secretary to Government
Home, Prohibition and Excise (IVI) Dept.,
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6.

The Public Prosecutor
High Court, Madras.



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

mk

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