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H.C.P.No.1416 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.1416 of 2022

Sumathi

W/o.Manoharan

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Dept.,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate
Office of the District Collector,
Coimbatore District.
3. The Superintendent of Police
Office of the Superintendent of Police
Coimbatore District.
4. The Superintendent of Prison
Central Prison at Coimbatore.
5. The Inspector of Police
Mettupalayam Police Station
Coimbatore District.

.. Respondents

Page Nos.1/8



H.C.P.No.1416 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in detention order in Cr.M.P.No.17/G/2022/E1 dated 24.06.2022 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 Manoharan, S/o.Aaran @ Aruchamy aged 38 years now confined in Central Prison at Coimbatore 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 20.07.2022 assailing a 'detention order dated 24.06.2022 bearing reference Cr.M.P.No.17/G/2022/E1' [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.



H.C.P.No.1416 of 2022

WEB COPY

2. Spouse of the detenu is the petitioner before us.

3. 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.

4. 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].

5. There are two adverse cases and one ground case and that ground case is Crime No.397 of 2022 for alleged offences under Sections 294(b), 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter



H.C.P.No.1416 of 2022

'IPC' for the sake of convenience and clarity] on the file of the fifth respondent, who is the Sponsoring Authority.

6. Notwithstanding very many averments in the support affidavit of captioned HCP, Ms.R.Subadra Devi, learned counsel on record for petitioner projects one point and that is delay in making the impugned detention order.

7. As regards delay in making the impugned detention order, what put in legal parlance, it translate into 'live and proximate link between the grounds of detention and purpose of detention has snapped'. In the case on hand, the arrest / remand in the ground case was on 28.04.2022 and the impugned detention order has been made by the Detaining Authority on 24.06.2022 i.e., 57 days later.

8. We draw inspiration from **Banik** 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



H.C.P.No.1416 of 2022

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 'live and proximate link between grounds of detention and purpose of detention snapping' point should be considered 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'.

9. In the case on hand, 'live and proximate link between the grounds of detention and purpose of detention snapping' point has been raised by the learned counsel for the petitioner in the support affidavit in ground (vi) which reads as follows:

'vi) That the detenu was arrested on 28.04.2022 and the said detention order was passed on 24.06.2022. The detention order was passed an inordinate delay which amounting to violation of his personal liberty.'

The above has been met by the State in the counter affidavit dated



H.C.P.No.1416 of 2022

01.11.2022 and relevant portion of the counter affidavit is ground (vi) under caption 'Grounds' and the same reads as follows:

'vi) It is submitted that there is no inordinate delay in passing the detention order against the detenu as averred by the petitioner and it does not amount to violation of his personal liberty.'

10. We examined the case on hand on facts and circumstances of the matter as well as the trajectory the matter has taken. There are two adverse cases and one ground case. Details have already been alluded to supra elsewhere in this order. A careful perusal of the cases in the impugned detention order read in the context of the manner in which the ground has been projected by the petitioner and the manner in which the same has been met by the State, we have no difficulty in persuading ourselves to believe that 'live and proximate link between the grounds of detention and purpose of detention' has snapped in the case on hand. We are also convinced that as regards this 'live and proximate link between the grounds of detention and purpose of detention snapping' point it turns on unexplained delay facet of the point.



H.C.P.No.1416 of 2022

11. The above is good enough to interfere with the impugned detention order made by the Detaining Authority (second respondent).

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

13. Ergo, the sequitur of the narrative, discussion and dispositive reasoning thus far is, captioned HCP is allowed. Impugned detention order dated 24.06.2022 bearing reference Cr.M.P.No.17/G/2022/E1 made by the second respondent is set aside and the detenu Thiru.Manoharan, son of Thiru.Aaran @ Aruchamy 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

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

Page Nos.7/8



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H.C.P.No.1416 of 2022

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

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To

1. The Additional Chief Secretary to Government
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H.C.P.No.1416 of 2022

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