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HCP No.1439 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.1439 of 2022

Guhan

S/o.V.Subramaniam

.. Petitioner

Vs.

1.The State of Tamilnadu,
Represented by the Chief Secretary,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Veppery, Chennai - 600 007.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
R-4, Pondy Bazaar Police Station,
Chennai.

... 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 of the second respondent in detention order in BCDFGISSV No.182/2022, dated 04.07.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same as illegal and unconstitutional and also direct the respondents to produce the petitioner's son Aravind Subramaniam S/o. Guhan, aged about 36 years now confined in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.C.Mohana Krishnan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the father of the detenu assailing 'detention order dated 04.07.2022 bearing reference BCDFGISSSV.No.182/2022' [hereinafter 'impugned detention order' for the sake of convenience] made by the 'second respondent' [hereinafter 'detaining authority' for the sake of convenience and clarity].

2.Mr.G.Mohana Krishnan, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for respondents are before us.



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3. In and by the impugned detention order, the detenu has been detained branding him as 'Goonda' within the meaning of Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience].

4. Learned counsel for petitioner notwithstanding very many averments in the support affidavit, advertng to the impugned detention order submits that the detenu was arrested on 16.05.2022 in the ground case but the impugned detention order has been made only on 04.07.2022. Elaborating on this, learned counsel for petitioner submitted that the live and proximate link between the grounds of detention and purpose of detention has snapped. It was also submitted that the ground case had become stale on the date on which impugned detention order was made. Learned counsel for petitioner pointed out that this point has been urged by the petitioner as ground (f) in the support affidavit and the same reads as follows:

'(f) My son, the detenue was arrested on 16.05.2022
in the present case, however, the order of detention was



passed on 04.07.2022 with the delay of 50 days and the said delay of the detention authority still remains unexplained.'

5.Learned Additional Public Prosecutor submitted that some delay has occurred in collecting material. However, we deem it appropriate to look at the counter affidavit filed by the respondents. Paragraph 12 of the counter affidavit is the respondents' answer to aforementioned ground (f) and this paragraph 12 reads as follows:

'12.I respectfully submit that the averment made in Paragraph Ground (f) of the affidavit, is not correct. Considering the offences in the adverse cases and in the ground case, the Sponsoring authority has initiated a proposal for the detention of the detenu. After completely reading the proposal, affidavit and supporting documents filed by the Sponsoring authority and after perusing the case diaries of the cases in which the detenu is involved and after coming to the subjective satisfaction, the Detaining authority has passed the order of detention of the detenue as Goonda on 04.07.2022. Hence, the averment of the petitioner that the Detaining authority has failed to apply his mind is not correct and false.'



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6.A careful perusal of the grounds raised and the manner in which it has been met leaves us with the considered opinion that this is a case of unexplained delay. In this regard, we remind ourselves of ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in ***2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***]. ***Sushanta Kumar Banik's*** case arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tripura, Hon'ble Supreme Court made it clear that such pleas have to be examined on a case to case basis. It was also made clear that this live and proximate link snapping point has two facets, one is 'unreasonable delay' and the other is 'unexplained delay'. From the rival contentions supra [as articulated in the HCP affidavit and counter] we find that the captioned matter falls under the latter category as the explanation offered is hardly acceptable as it is in very generic terms and bereft of specificity. We have no difficulty in accepting the argument of the learned counsel for petitioner that the ground case had become stale qua the impugned detention order.

7.As the petitioner succeeds in his campaign against the impugned



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detention order on the above ground i.e., proximate and live link between the grounds of detention and purpose of detention having snapped, we have no difficulty in saying that the impugned detention order deserves to be set aside.

8.Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 04.07.2022 bearing reference BCDFGISSSV No.182/2022 made by the second respondent is set aside and the detenu Thiru.Aravind Subramaniam, aged 36 years, son of Thiru.Guhan is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
27.02.2023

Index:Yes/No

Neutral Citation : Yes/No

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Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai



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

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