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HCP.No.1259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

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THE HONOURABLE MR . JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1259 of 2023

M.Ramani .. Petitioner

Vs.

- 1.The State of Tamil Nadu rep. by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Magistrate and District Collector,
Erode District, Erode.
- 3.The Superintendent of Police,
Erode District, Erode.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
Erode North Police Station,
Erode.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the entire records from the second respondent in connection with the order in CrI.M.P.No.12/Goonda/2023/C1 dated 16.06.2023 and quash the same and produce the petitioner's son namely Boopathy @ Prabakaran, S/o.Manickam, aged 30 years, now confined in Central



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Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, mother of the detenu Boopathy @ Prabakaran, has come forward with this petition challenging the detention order passed by the second respondent dated 16.06.2023 slapped on her son, branding him as "Goonda" under 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].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the detenu was



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earlier arrested in the ground case in Crime No.182 of 2023 but no charge sheet was filed till 13.06.2023. Therefore, bail was granted to the detenu after recording the fact that the detenu is entitled to statutory bail under Section 167(2) Cr.P.C. It is also admitted that the detenu was in judicial custody for 63 days from 12.04.2023 and no charge sheet was filed within the statutory period. The order of detention was passed on 16.06.2023 and the detenu was arrested based on the warrant of arrest dated 16.06.2023.

4. Having regard to the fact that the detenu was arrested as early as on 12.04.2023; that the detenu was released on statutory bail on 16.06.2023 and that thereafter the detention order has been passed on the same day i.e., 16.06.2023, this Court is of the view that the live and proximate link between the grounds of detention and purpose of detention is snapped. There is no explanation for the delay of nearly 63 days in sending the proposal and detaining the detenu after the arrest in the ground case.

5. The Hon'ble Supreme Court in the case of **Sushantha Kumar Banik Vs. State of Tripura and Others** reported in **AIR 2022 SC 4715**, has dealt with similar situation and has held in paragraph No.21 as follows:-



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"21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

6. The Hon'ble Supreme Court was persuaded to allow the Appeal filed before it mainly on the ground that delay in passing the Order of Detention from the date of the proposal would snap the "live and proximate link" between prejudicial activities and the purpose of detention. Therefore, failure on the part of the Detaining Authority in explaining such delay as in the present case also is a valid ground for quashing the Detention Order.

7. In view of the aforesaid reason, the detention order passed by the second respondent dated 16.06.2023 in Cr.M.P.No.12/Goonda/2023 C1, is hereby set aside and the Habeas



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Corpus Petition is allowed. The detenu viz., Boopathy @ Prabakaran, S/o.(late) Manickam, aged about 30 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
17.11.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Magistrate and District Collector,
Erode District, Erode.
- 3.The Superintendent of Police,
Erode District, Erode.
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- 5.The Inspector of Police,
Erode North Police Station,
Erode.
- 6.The Public Prosecutor
High Court, Madras.



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AND
SUNDER MOHAN, J.,**

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