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H.C.P.No.1534 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1534 of 2022

B.Kala
W/o.Balan

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Secretary to Govt.
Home, Prohibition and Excise Department
Fort St.George
Chennai.

2. The Commissioner of Police
Greater Chennai
Chennai District
Chennai.

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

4. Inspector of Police
D3 Ice House Police Station (Crime)
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 pertaining to the detenu Karthikeyan @ Baba Karthik, Son of Balan, who is detained under Tamil Nadu Act 14 of 1982 as Goondas at Central Puzhal Prison, Chennai, herein vide order in No.208/BCDFGISSSV/2022 dated 22.07.2022 on the file of the second respondent herein and to quash the same and direct the respondent herein to produce the body of the detenu Karthikeyan @ Baba Karthik Son of Balan, aged about 21 years before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.P.Thinesh
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 22.07.2022 bearing reference BCDFGISSSV No.208/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent



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is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.269 of 2022 on the file of D-3 Ice House Police Station for alleged offences under Sections 341, 294(b), 323, 336, 427, 392 read with 397 and 506(ii) 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix



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or be detained further by facts.

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4.Mr.P.Thinesh, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr. Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. Learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 15.06.2022 but the impugned detention order has been made only on 22.07.2022.

6. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time was consumed for the same. Considering the facts and circumstances of the case and nature of ground case as well as four adverse cases, we find that this explanation of learned Prosecutor is unacceptable.



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7. We remind ourselves of **Sushanta Kumar Banik's** case [**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 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 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'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

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



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9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.07.2022 bearing reference BCDFGISSSV No.208/2022 made by the second respondent is set aside and the detenu Thiru.Karthikeyan @ Baba Karthik, aged 21 years, son of Thiru.Balan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

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

(M.S.,J.)

(M.N.K.,J.)

06.03.2023

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, Puzhal, Chennai.

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M.NIRMAL KUMAR, J.,

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