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H.C.P.No.1552 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1552 of 2022

Kamali

W/o.Tamilselvan @ Tamilarasan

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Petitioner

Vs.

1. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George, Chennai.
2. The District Collector & District Magistrate
Tirupathur District
Tirupathur - 635 601.
3. The Superintendent of Police
Tirupathur District
Tirupathur - 635 601.
4. The Superintendent of Prison
Central Prison, Vellore, Vellore District.
5. The Inspector of Police
Tirupathur Town Police Station
Tirupathur District.

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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 relating to the impugned order in C3/D.O.No.40/2022 dated 28.07.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce namely, Tamilselvan @ Tamilarasan, Son of Chinnadurai @ Venkatesan, aged about 28 years, now confined at Central Prison, Vellore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar
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 wife of detenu assailing a 'preventive detention order dated 28.07.2022 bearing reference C3/D.O.No.40/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.89 of 2022 on the file of Tirupathur Town Police Station for alleged offences under Sections 294(b), 323, 324, 302 and 506(ii) of '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 or be detained further by facts.



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4. Mr.G.Vinodh Kumar, learned counsel on record 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 20.05.2022 but the impugned detention order has been made only on 28.07.2022.

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, we find that this explanation of learned Prosecutor is unacceptable.

7. We remind ourselves of ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw***



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(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.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.07.2022 bearing reference C3/D.O.No.40/2022 made by the second respondent is set aside and the detenu



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Thiru.Tamilselvan @ Tamilarasan, age 28 years, Son of Chinnadurai @

Venkatesan is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

08.03.2023

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, Vellore.

To

1. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George, Chennai.
2. The District Collector & District Magistrate
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6. The Public Prosecutor
High Court, Madras.

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