



H.C.P.No.1589 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1589 of 2022

Lakshmi
W/o.Kannan

... Petitioner/Mother of the Detenu

Vs.

1.The State of Tamil Nadu,
represented by its Additional Chief
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Avadi City,
Chennai – 54.

3.The Inspector of Police (Crime),
T-15, S.R.M.C. Police Station,
Chennai.

4.The Superintendent,
Central Prison, Puzhal
Chennai.

... Respondents

Page Nos.1/8



H.C.P.No.1589 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the detention made in Memo No.75/BCDFGISSSV/2022 dated 14.07.2022 passed by the Commissioner of Police, Avadi City, Chennai – 54 the second respondent herein and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set the detenu Thiru.Selvamani @ Selvam, S/o.Kannan, aged 27 years now confined in Central Prison, Puzhal II, Chennai and set him at liberty.

For Petitioner : Mr.R.Balakrishnan

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 14.07.2022 bearing reference No.75/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

Page Nos.2/8



H.C.P.No.1589 of 2022

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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 are five adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.352 of 2022 on the file of T-15 S.R.M.C. Police Station for alleged offences under Sections 341, 294(b), 336, 427, 397 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.



H.C.P.No.1589 of 2022

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

5. Notwithstanding very many averments in the support affidavit 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 04.06.2022 but the impugned detention order has been made only on 14.07.2022.

6. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected, collated 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 is not convincing. Therefore, we have no difficulty in saying that the ground case which is the substratum of the impugned detention order has become stale.



H.C.P.No.1589 of 2022

WEB COPY

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. Therefore, the impugned detention order is vitiated and the same is liable to be dislodged.

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

Page Nos.5/8



H.C.P.No.1589 of 2022

WEB COPY

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.07.2022 bearing reference No.75/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Selvamani @ Selvam, aged 27 years, son of Thiru.Kannan, now detained in Central Prison, Puzhal-II, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S.,J.) (M.N.K.,J.)
07.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal-II, Chennai.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Avadi City,
Chennai – 54.

Page Nos.6/8



H.C.P.No.1589 of 2022

3.The Inspector of Police (Crime),
T-15, S.R.M.C. Police Station,
Chennai.

4.The Superintendent,
Central Prison, Puzhal
Chennai.

5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.1589 of 2022

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

rsi

H.C.P.No.1589 of 2022

07.03.2023

Page Nos.8/8