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H.C.P.No.1587 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.1587 of 2022

Shireen Begum

W/o.Mohammed Nadeem

... Petitioner/Wife of Detenu

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.District Collector & District Magistrate,
Tirupathur District,
Tirupathur – 635 601.

3.The Superintendent of Police,
Tirupathur District, Tirupathur.

4.The Superintendent of Prison,
Central Prison,
Vellore – 2.

5.The Inspector of Police,
Vaniyambadi Town Police,
Tirupathur District.

.. 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 in connection with the order of detention passed by the second respondent dated 28.07.2022 in C3/D.O.No.41/2022 against the petitioner husband Mohammed Nadeem, male aged 22 years, son of Muneer Ahmed, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Mathivanan
for Mr.D.Balaji

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 No.C3/D.O.No.41/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is



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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 six adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.148 of 2022 on the file of Vaniyambadi Town Police Station for alleged offences under Sections 294(b), 392, 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.



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4. Mr.S.Mathivanan, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all five 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 21.06.2022 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 material had to be collected, collated and time was consumed in this process. 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.



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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. 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.

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9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.07.2022 bearing reference No. C3/D.O.No.41/2022 made by the second respondent is set aside and the detenu Thiru.Mohammed Nadeem, aged 22 years, son of Thiru.Muneer Ahmed, now detained in Central Prison, Vellore 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, Vellore.

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.District Collector & District Magistrate,
Tirupathur District,
Tirupathur – 635 601.

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3.The Superintendent of Police,
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4.The Superintendent of Prison,
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Vellore – 2.

5.The Inspector of Police,
Vaniyambadi Town Police,
Tirupathur District.

6.The Public Prosecutor
High Court, Madras.



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