



WEB COPY



H.C.P.No.1562 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.1562 of 2022

Kavitha

W/o.Kubendran

..

Petitioner

Vs.

1. The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise IX
Secretariat,
St.George Fort, Chennai-600 009.
2. The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Dharmapuri.
3. The Superintendent of Police
Dharmapuri District
Dharmapuri.
4. The Superintendent of Prison
Central Prison
Salem.



H.C.P.No.1562 of 2022

WEB COPY

5. The Inspector of Police
Perumbalai Police Station
Dharmapuri District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the 2nd respondent in reference to detention order in S.C.No.20/2022 dated 21.07.2022, setting aside the order of detention passed therein and directing the respondent to produce the detenu by namely Gubendiran, Son of Perumal, aged about 38 years before this Hon'ble Court, now detained in Central Jail at Salem and setting him at liberty.

For Petitioner	:	Mr.J.Pradeep
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 21.07.2022 bearing reference S.C.No.20/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority.

Page Nos.2/6



H.C.P.No.1562 of 2022

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 substratum of the impugned detention order is Crime No.72 of 2022 on the file of Perumbalai Police Station for alleged offences under Sections 341 and 302 '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.

4. Mr.J.Pradeep, 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.



H.C.P.No.1562 of 2022

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 29.05.2022 but the impugned detention order has been made only on 21.07.2022.

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 to be unacceptable.

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



H.C.P.No.1562 of 2022

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 21.07.2022 bearing reference S.C.No.20/2022 made by the second respondent is set aside and the detenu Thiru.Gubendiran, aged 38 years, son of Thiru.Perumal, 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

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

Page Nos.5/6



WEB COPY



H.C.P.No.1562 of 2022

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

mk

To

1. The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise IX
Secretariat,
St.George Fort, Chennai-600 009.
2. The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Dharmapuri.
3. The Superintendent of Police
Dharmapuri District
Dharmapuri.
4. The Superintendent of Prison
Central Prison
Salem.
5. The Inspector of Police
Perumbalai Police Station
Dharmapuri District.
6. The Public Prosecutor
High Court, Madras.

H.C.P.No.1562 of 2022

06.03.2023