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H.C.P.No.1594 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1594 of 2022

Rahamath Nisha
W/o.Balaji

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department (Home)
Chennai-600 009.
2. The Commissioner of Police
Commissioner Office
Avadi, Chennai-600 054.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai-600 066.
4. The Inspector of Police
E-3, Minjur Police Station
Thiruvallur District - 601 203.

.. Respondents

Page Nos.1/7



H.C.P.No.1594 of 2022

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 detenu's detention order passed by the 2nd respondent vide BCDFGISSSV No.81/2022 dated 19.07.2022 and set aside the same and produce the detenu Balaji, son of Ramalingam, male aged about 38 years, now detained in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.G.Balachandar
representing Mr.Ranjith 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 19.07.2022 bearing reference No.81/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority.

2. Impugned detention order has been made under 'The Tamil Nadu



H.C.P.No.1594 of 2022

WEB COURT

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.248 of 2022 on the file of E-3 Minjur Police Station for alleged offences under Sections 147, 148, 341, 294(b), 324, 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 147, 148, 294(b), 324, 302, 506(ii) of IPC read with 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. 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.1594 of 2022

4. Mr.G.Balachandar, learned counsel representing the 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 18.05.2022 but the impugned detention order has been made only on 19.07.2022.

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 is unacceptable.

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



H.C.P.No.1594 of 2022

(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 19.07.2022 bearing reference No.81/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Balaji, aged 38 years, son of Thiru.Ramalingam, is directed to be set at liberty forthwith, if not required in connection with any other



H.C.P.No.1594 of 2022

case / cases.

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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.

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department (Home)
Chennai-600 009.
2. The Commissioner of Police
Commissioner Office
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5. The Public Prosecutor
High Court, Madras.

Page Nos.6/7



WEB COPY



H.C.P.No.1594 of 2022

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

mk

H.C.P.No.1594 of 2022

06.03.2023

Page Nos.7/7