



WEB COPY



H.C.P.No.1606 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.1606 of 2022

Kairunisha

W/o.Kadhar Bhasha

... Petitioner/Mother of Detenu

Vs.

State Rep. by

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

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
Pallapatty Police Station,
Salem City.

.. Respondents

Page Nos.1/8



H.C.P.No.1606 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 in C.M.P.No.78/Goonda/Salem City/2022 dated 26.07.2022 on the file of the Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenue, Jaffer Ali, S/o.Kadhar Basha, aged about 35 years, now confined at Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Kalaiyaran
for Mr.S.Sengkodi

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 26.07.2022 bearing reference C.M.P.No.78/Goonda/Salem City/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth 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.1606 of 2022

WEB COPY

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 two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.327 of 2022 on the file of Pallapatty Police Station for alleged offences under Sections 341, 392 read with 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.1606 of 2022

4. Mr.M.Kalaiyaran, 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 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 30.06.2022 but the impugned detention order has been made only on 26.07.2022.

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 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.1606 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 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.1606 of 2022

WEB COPY

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.07.2022 bearing reference C.M.P.No.78/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Jaffer Ali, aged 35 years, son of Thiru.Kadhar Basha, now detained in Central Prison, Salem 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, Salem.



H.C.P.No.1606 of 2022

To

WEB COPY

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort. St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Salem City.
3. The Superintendent of Prison,
Central Prison, Salem.
4. The Inspector of Police,
Pallapatty Police Station,
Salem City.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1606 of 2022

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

rsi

H.C.P.No.1606 of 2022

07.03.2023

Page Nos.8/8