



HCP.No.1617 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.1617 of 2022

Sivasangai
W/o.Velmurugan

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department ,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate
Kallakurichi District,
Kallakurichi.
- 3.The Superintendent of Police,
Kallakurichi District,
Kallakurichi.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Thirunavalur Police Station,
Kallakurichi District.

... Respondents



HCP.No.1617 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 D.O.No.C2/29/2022 dated 27.05.2022 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the petitioner's husband Thiru.Velmurugan, son of Kaliyan aged about 39 years who now detained in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Ms.R.Poornima
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity and convenience] has been filed by wife of the detenu assailing a 'detention order dated 27.05.2022 bearing reference D.O.No.C2/29/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'jurisdictional District Collector/District Magistrate' [hereinafter 'detaining authority' for the sake of convenience and clarity].

2.In and by the impugned detention order the detenu has been branded as 'Goonda' within the meaning of Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video



HCP.No.1617 of 2022

Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982'
for the sake of convenience].

3.Ms.R.Poornima, learned counsel for petitioner is before us. Notwithstanding very many grounds raised in the affidavit filed in support of the captioned HCP learned counsel focuses her campaign against the impugned order on the point that the live and proximate link between the grounds of detention and purpose of detention has snapped in the case on hand. Elaborating on this point, learned counsel submits that the alleged occurrence was on 17.10.2021, the detenu surrendered on 02.04.2022 but the impugned detention order has been made only on 27.05.2022 nearly two months later. It is also pointed out that this ground has been articulated in the support affidavit in paragraph 6 and the same reads as follows:

'6.The detenue was arrested on 02.04.2022 and the detention order was passed on 27.05.2022. Totally there is 56 days delay in passing detention order. It will show the malicious intention of the sponsoring authority as well as the detaining authority by clamping the detention order against the detenu. Hence the detention order is vitiated.'



HCP.No.1617 of 2022

WEB COPY

4. In response to the aforesaid point, learned Additional Public Prosecutor advertent to the counter affidavit, more particularly, paragraph 6 thereof submits that the impugned detention order has been made as early as possible and there is no malicious intention on the part of the detaining authority. To be noted paragraph 6 of the counter affidavit of the State reads as follows:

'(6) Regarding the averment made in paragraph No.(6) of the Grounds. I submit that once the proposal is received from the sponsoring authority, after the careful perusal of the materials, the Detention Order will be passed as early as possible. In this case, the proposal was received from the Sponsoring Authority on 26.05.2022. The Detention Order was passed against the detenu on 27.05.2022. Hence there is no delay in passing the Detention Order. I submit that there is no malicious intention on the part of the Detaining Authority, as stated by the petitioner.'

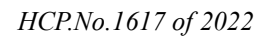
5. A careful perusal of the aforementioned point i.e., live and proximate link snapping, the manner in which the same has been articulated in the support affidavit and the manner in which it has been met by the State



HCP.No.1617 of 2022

leaves us with the considered opinion that this is clearly a case of unexplained delay.

6. In this regard, we remind ourselves of ***Sushanta Kumar Banik's*** case [***Sushanta Kumar Banik Vs. State of Tripura & Ors.*** reported in 2022 ***LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***]. To be noted ***Banik's*** case, on facts is one which arose in the State of Tripura under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity]. In this case after tracing the trajectory the matter took, Hon'ble Supreme Court came to the conclusion that this point has to be dealt with on a case to case basis. A careful reading of the manner in which this point has been elucidated by the Hon'ble Supreme Court in ***Banik's*** case brings to light that there are two facets to the point. One facet is 'unreasonable delay' and the other facet is 'unexplained delay'. In the case on hand as alluded to and delineated supra, this is clearly a case of unexplained delay. We also make it clear that it is nobody's case that the delay was owing to malicious intention. The point is whether the delay has been adequately explained i.e., explained in a manner that is acceptable qua facts of case on hand and explained in a manner that



7.Ergo, the sequitur is captioned HCP is allowed and the detention dated 27.05.2022 bearing reference D.O.No.C2/29/2022 made by the respondent is set aside and the detenu Thiru.Velmurugan, aged 39 son of Thiru.Kaliyan is directed to be set at liberty forthwith unless arrested in connection with any other case. There shall be no order as to

<https://www.mhc.tn.gov.in/judis>



HCP.No.1617 of 2022

To

WEB COPY

1. The Secretary to Government,
Home, Prohibition and Excise Department ,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate
Kallakurichi District,
Kallakurichi.
3. The Superintendent of Police,
Kallakurichi District,
Kallakurichi.
4. The Superintendent,
Central Prison, Cuddalore.
5. The Inspector of Police,
Thirunavalur Police Station,
Kallakurichi District.
6. The Public Prosecutor,
High Court of Madras,
Chennai - 104.



WEB COPY



HCP.No.1617 of 2022

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

cse

H.C.P.No.1617 of 2022

28.02.2023