



H.C.P.No.1650 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1650 of 2022

K.Mani

F/o.Jegadish Alias Jegadishkumar

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The District Magistrate / District Collector /
Detaining Authority
Tiruppur District
Tiruppur.
3. The Superintendent of Police
Tiruppur District
Tiruppur.
4. The Superintendent (Jail)
Central Prison
Coimbatore.

Page Nos.1/8



H.C.P.No.1650 of 2022

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5. The Inspector of Police
Dharapuram Police Station
Tiruppur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the petitioner's son who is the detenu by name Jegadish alias Jegadishkumar, aged about 38 years before this Hon'ble Court and set him at liberty forthwith, by calling for the records pertaining to the detention order dated 16.08.2022 made in Cr.M.P.No.56/Goonda/2022 on the file of the 2nd respondent, quash the same.

For Petitioner	:	Mr.K.Karthikeyan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.N.Narkeeran, 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 father of detenu assailing a 'preventive detention order dated 16.08.2022 bearing reference Cr.M.P.No.56/GOONDA/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



H.C.P.No.1650 of 2022

the detaining authority as the 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 five adverse cases and one ground case. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.238 of 2022 on the file of Dharapuram Police Station for an alleged offence under Section 379 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.1650 of 2022

WEB COPY

4. Mr.K.Karthikeyan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.N.Narkeeran, 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 23.06.2022 but the impugned detention order has been made only on 16.08.2022.

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 in this exercise. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor 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.1650 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 a proposal by a 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 the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.

8. To be noted, **Banik** case has been respectfully followed by this Court in **Gomathi Vs.The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported vide Neutral Citation of Madras High Court being **2023/MHC/733** and a series of other orders in HCP cases.



H.C.P.No.1650 of 2022

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.08.2022 bearing reference Cr.M.P.No.56/GOONDA/2022 made by the second respondent is set aside and the detenu Thiru.Jegadish alias Jegadishkumar, aged 38 years, son of Thiru.Mani is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

20.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

Page Nos.6/8



H.C.P.No.1650 of 2022

To
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5. The Inspector of Police
Dharapuram Police Station
Tiruppur District.
6. The Public Prosecutor
High Court, Madras.



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H.C.P.No.1650 of 2022

M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,

mk

H.C.P.No.1650 of 2022

20.03.2023

Page Nos.8/8