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H.C.P.No.1770 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1770 of 2022

Meenakshi

.. Petitioner/
Wife of Detenu

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department
Fort St. George, Chennai-600 009.

2.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City,
Coimbatore – 641 018.

3.The Superintendent of Central Prison,
Coimbatore Central Prison,
Coimbatore – 641 018.

4.The Inspector of Police,
B-2 R.S.Puram Police Station,
Coimbatore City.

.. Respondents

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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 detenu by name P.Deepan Bharathi @ Deepan @ Ashokkumar, son of Pandidurai @ Pandi, aged 34 years, presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order and grounds of detention order Tamil and English dated 11.08.2022 made in C.No.51/G/IS/2022 passed by the second respondent and quash the same.

For Petitioner : Mr.A.Nowfal

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

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 the wife of detenu assailing a 'preventive detention order dated 11.08.2022 bearing reference C.No.51/G/IS/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.

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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. The ground case which is the sole substratum of the impugned detention order is Crime No.293 of 2022 on the file of Coimbatore City Crime Branch for alleged offence under Sections 406, 420, 465, 468 and 471 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] which was subsequently altered to Sections 406, 420, 465, 468, 471, 506(ii) and 120(B) of IPC. 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.



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4.Mr.A.Nowfal, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by 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 02.07.2022 but the impugned detention order has been made only on 11.08.2022.

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 for the same. Considering the facts and circumstances of the case 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 (SC) 813 : 2022 SCC OnLine SC 1333***]. To be noted, ***Banik*** case law



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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.To be noted, **Banik** case has been respectfully followed by this Bench 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 series of other HCP matters.



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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 11.08.2022 bearing reference C.No.51/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.P.Deepan Bharathi @ Deepan @ Ashokkumar, male, aged 34 years, son of Thiru.Pandidurai @ Pandi 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.) (M.N.K.,J.)
16.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
cse

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



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To

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- 5.The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

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