



H.C.P.No.1730 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1730 of 2022

Mahalakshmi
W/o.Ganesan

.. Petitioner

Vs.

1. The Secretary to the Government
Government of Tamil Nadu
(Home) Prohibition and Excise Dept.
Fort St.George
Chennai-600 009.
2. The District Collector and District Magistrate
Thiruvarur District
Thiruvarur.
3. The Superintendent of Police
Thiruvarur District
Thiruvarur.
4. The Superintendent of Prison
Central Prison
Tiruchirapalli.

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5. The Inspector of Police
Kudavasal Circle
Thiruvarur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the order of the 2nd respondent herein concerned in C.O.C.No.17/2022 dated 28.07.2022 and quash the order of detention passed therein by the 2nd respondent herein against the detenu and directing the respondents herein to produce the body and person of the detenu by name Prabhakaran, son of Ganesan, aged about 26 years, now detained at Central Prison, Tiruchirappalli before this Hon'ble Court and setting him at liberty forthwith.

For Petitioner	:	Mr.M.R.Elavarasan
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 28.07.2022 bearing reference C.O.C.No.17/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the

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detaining authority as 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 is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.162 of 2022 on the file of Eravancherry Police Station for alleged offences under Sections 147, 148, 341, 294(b) and 302 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.



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4. Mr.M.R.Elavarasan, learned 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 20.06.2022 but the impugned detention order has been made only on 28.07.2022.

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 of learned Prosecutor is unacceptable.



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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.

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



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9. Apropos, the sequitur is, captioned HCP is allowed. Impugned

detention order dated 28.07.2022 bearing reference C.O.C.No.17/2022

made by the second respondent is set aside and the detenu

Thiru.Prabhakaran, age 26 years, Son of Thiru.Ganesan 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.)

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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, Tiruchirapalli.



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To
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5. The Inspector of Police
Kudavasal Circle
Thiruvarur District.
6. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and



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M.NIRMAL KUMAR, J.,

mk

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