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H.C.P.No.1746 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.1746 of 2022

Palaniyammal

.. Petitioner/
Wife of Detenu

Vs.

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

2.The District Magistrate cum District Collector,
Tiruppur, Tiruppur District.

3.The Superintendent of Police,
Tiruppur, Tiruppur District.

4.The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.

5.State rep. by
The Inspector of Police,
Udumalaipettai Police Station,
Tiruppur District.

.. Respondents

Page Nos.1/8



H.C.P.No.1746 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 entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 01.08.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.47/Goonda/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Mari @ Mariappan S/o.Chelladurai aged 34 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.V.Paarthiban
for Mr.R.Sasikumar

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 01.08.2022 bearing reference Cr.M.P.No.47/Goonda/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and

Page Nos.2/8



H.C.P.No.1746 of 2022

second respondent is the 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. The ground case which is the sole substratum of the impugned detention order is Crime No.277 of 2022 on the file of Udumalaipettai Police Station for alleged offence under Sections 147, 148, 294(b), 324 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.



H.C.P.No.1746 of 2022

4.Mr.V.Paarthiban, learned counsel representing Mr.R.Sasikumar, 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 28.05.2022 but the impugned detention order has been made only on 01.08.2022.

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*



H.C.P.No.1746 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 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.



H.C.P.No.1746 of 2022

WEB COPY 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 01.08.2022 bearing reference Cr.M.P.No.47/Goonda/2022 made by the second respondent is set aside and the detenu Thiru.Mari @ Mariappan, male, aged 34 years, son of Thiru.Chelladurai 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.



H.C.P.No.1746 of 2022

To

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



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H.C.P.No.1746 of 2022

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

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H.C.P.No.1746 of 2022

16.03.2023

Page Nos.8/8