



H.C.P.No.1781 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.1781 of 2022

Ammu  
W/o.Sekar

..

Petitioner/  
Mother of detenu

Vs.

1. State of Tamil Nadu  
Rep. By its Secretary to Government (Home)  
Prohibition and Excise Department  
Fort St.George, Chennai-600 009.

2. The Commissioner of Police  
Avadi

3. The Superintendent  
Central Prison  
Puzhal

4. The Inspector of Police  
E-5, Sholavaram Police Station  
Thiruvallur District

.. 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 call for the records of the second respondent in his proceedings No.98/BCDFGISSSV/2022 dated 17.08.2022 to quash the same and consequently direct the respondents to produce petitioner's son (detenu) Seenu, son of Sekar, male aged 24 years before this Court, now confined at Central Prison, Puzhal and set him at liberty forthwith.

For Petitioner : Mr. C.Premkumar

For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
Assisted by  
Mr.N.Narkeeran

### **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 17.08.2022 bearing reference 98/BCDFGISSSV/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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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.500 of 2022 on the file of E-5, Sholavaram Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. 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.

4. Mr.C.Premkumar, learned counsel on record for petitioner and



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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 on 28.06.2022 but the impugned detention order has been made only on 17.08.2022.

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 arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic



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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.

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



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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.08.2022 bearing reference 98/BCDFGISSSV / 2022 made by the second respondent is set aside and the detenu Thiru.Seenu, son of Thiru.Sekar, male aged 24 years 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

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



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To

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1. The Secretary to Government (Home)  
Prohibition and Excise Department  
Fort St.George, Chennai-600 009.
2. The Commissioner of Police  
Avadi
3. The Superintendent  
Central Prison  
Puzhal, Chennai-66
4. The Inspector of Police  
E-5, Sholavaram Police Station  
Thiruvallur District
5. The Public Prosecutor  
High Court, Madras.



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

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