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H.C.P.No.1800 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.1800 of 2022

Venkatammal
W/o.Krishnan

..

Petitioner
/ Mother of detenu

Vs.

1. The State of Tamilnadu
Represented by Secretary to Government
Prohibition & Excise Department
Fort St. George
Chennai – 600 009

2. The Commissioner of Police
Avadi City
Office of the Commissioner of Police
(Goondas Section)
Avadi
Chennai – 600 054

3. The Superintendent of Police
Central Prison, Puzhal

4. The Inspector of Police

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E-5, Sholavaram Police Station
Chennai – 600 067

.. 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 relating to the detention order dated 17.08.2022 passed by the second respondent in B.C.D.F.G.I.S.S.S.V.No.99 of 2022 and quash the same and direct the respondents herein to produce the petitioner's son Ramki, son of Krishnan, aged 26 years, who is presently undergoing detention in the Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.P.Chandra Sekar
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 No.99/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



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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.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] reads 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



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further by facts.

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4. Mr.P.Chandra Sekar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor 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 28.06.2022 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 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.



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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 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



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vide Neutral Citation of Madras High Court being **2023/MHC/733** and a series of other orders in HCP cases.

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 17.08.2022 bearing reference No.99/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ramki, male, aged 26 years, son of Thiru.Krishnan 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 / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

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To

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High Court, Madras.



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

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