



WEB COPY



H.C.P.No.1855 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.1855 of 2022

M.Nagaraj

..

Petitioner/
Father of Detenu

Vs.

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

2.The District Magistrate and District Collector,
Salem District, Salem – 636 001.

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

4.The Superintendent of Prison,
Central Prison, Salem,
Salem District – 636 007.

5.The Inspector of Police,
Panamarathupatti Police Station,
Salem 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 entire records leading to the detention of the petitioner's son Thiru.Kozhi @ Gokul @ Gokulraj, son of Nagaraj, Male, aged about 23 years is presently lodged in Central Prison at Salem and has been detained under Act 14/82 is a Goonda vide detention order dated 19.07.2022 on the file of the second respondent herein, made in C.M.P.No.18/Goonda/C2/2022 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from Central Prison, Salem.

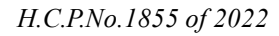
For Petitioner : Mr.E.C.Ramesh

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 father of detenu assailing a 'preventive detention order dated 19.07.2022 bearing reference C.M.P.No.18/Goonda.C2/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and



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.

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WEB COPY 4.Mr.E.C.Ramesh, 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 05.05.2022 but the impugned detention order has been made only on 19.07.2022.

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.

7.We remind ourselves of *Sushanta Kumar Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw*



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(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.



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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 19.07.2022 bearing reference C.M.P.No.18/Goonda/C2/2022 made by the second respondent is set aside and the detenu Thiru.Kozhi @ Gokul @ Gokulraj, male, aged 23 years, son of Thiru.Nagaraj 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, Salem.



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To

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- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The District Magistrate and District Collector,
Salem District, Salem – 636 001.
- 3.The Superintendent of Police,
Salem District, Salem.
- 4.The Superintendent of Prison,
Central Prison, Salem,
Salem District – 636 007.
- 5.The Inspector of Police,
Panamarathupatti Police Station,
Salem District.
- 6.The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

cse

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