



H.C.P.No.2132 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.2132 of 2022

R.Parameshwari

.. Petitioner/
Mother of Detenu

Vs.

- 1.The State of Tamil Nadu,
Rep. by Secretary to the Government,
Home, Prohibition & Excise Department
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Mayiladuthurai District Collectorate,
Mayiladuthurai – 609 001.
- 3.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai – 609 104.
- 4.The Superintendent of Police,
Trichy Central Prison,
Trichy – 620 020.

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5. Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondent to produce the body of the detenu by name Karnan S/o.Radhakrishnan aged 23 years, presently confined at Central Prison, Trichy before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 01.07.2022 in C.O.C.No.21/2022 passed by the second respondent and quash the same.

For Petitioner : Mr.V.T.Narendiran
for Mr.G.Paul Einstein

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

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 mother of detenu assailing a 'preventive detention order dated 01.07.2022 bearing reference C.O.C.No.21/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is



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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 are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.162 of 2022 on the file of Mayiladuthurai Police Station for alleged offence under Section 392 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.V.T.Narendiran, learned counsel representing 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 28.04.2022 but the impugned detention order has been made only on 01.07.2022.

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 01.07.2022 bearing reference C.O.C.No.21/2022 made by the second respondent is set aside and the detenu Thiru.Karnan, male, aged 23 years, son of Thiru.Radhakrishnan 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.



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To

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6. The Public Prosecutor
High Court, Madras.



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