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H.C.P.No.2290 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2290 of 2022

R.Daisy

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Prohibition and Excise Department (Home),
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Chennai City, Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 600 066.
- 4.The Inspector of Police,
F-3 Nungambakkam Police Station,
Chennai.

.. Respondents

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 detenu's detention order passed by the 2nd respondent BCDFGISSSV No.344/2022 dated 10.10.2022 and set-aside the same and produce the detenu Raja, male, aged about 33 years, S/o.Iyyanar, now detained in Central Prison, Puzhal, before this Court and set him at liberty.

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For Petitioner : Mr.S.Dhanasekar
For Respondents : Mr.E.Raj Thilak
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 wife of the detenu assailing a 'preventive detention order dated 10.10.2022 bearing reference BCDFGISSSV No.344/2022' [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.

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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3. The ground case which is the sole substratum of the impugned detention order is Crime No.253 of 2022 on the file of F3 Nungambakkam Police Station, for alleged offences under Sections 341, 294(b), 324, 336, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 341, 294(b), 324, 336, 302 and 506(ii) IPC. 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.S.Dhanasekar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit, very many points/grounds have been urged/raised but two points find favour with us and therefore we would set out those two points infra and refrain from legal drill of examining the other points.



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6. The first point turns on 'live and proximate link' between the grounds of detention and purpose of detention. To be noted a similar impugned preventive detention order was clamped on the co-detenu was dislodged by this Court by an order dated 18.04.2023 in HCP No.2264 of 2022 and that order is as follows:

'Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 10.10.2022 bearing reference BCDFGISSSV No.343/2022' [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.

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, Sandoffenders, 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 no adverse case. The ground case which is the sole substratum of the impugned detention order is



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Crime No.253 of 2022 on the file of F-3 Nungambakkam Police Station for alleged offences under Sections 341, 294(b), 324, 336, 307 and 506(ii) 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.

4. Mr.S.Dhanasekar, learned counsel 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 16.08.2022 but the impugned detention order has been made only on 10.10.2022.

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.

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



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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 vide Neutral Citation of Madras High Court being 2023/MHC/733, Sangeetha Vs. The Secretary to the Government and others reported vide Neutral Citation of Madras High Court being 2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others reported vide Neutral Citation of Madras High Court being 2023:MHC:1159 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.



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10. *Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.10.2022 bearing reference BCDFGISSSV No.343/2022 made by the second respondent is set aside and the detenu Thiru.Dhanasekar @ Sambar, aged 25 years, son of Thiru.Thangavel, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs. '*

7. As regards the above point, we find that the delay has been raised in paragraph 7 though not in terms of snapping of 'live and proximate link' but this has been raised by saying that there is 56 days delay. However, in paragraph 11 of the counter affidavit, this point has not even been glossed over and it simply remains unanswered. Therefore, the delay remains unexplained. 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***]. The Honourable Supreme Court made it clear that there are two facets. One facet is 'unreasonable delay' and other facet is 'unexplained delay'. The case on hand falls on the latter facet i.e., unexplained delay.



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8. The second point turns on delay in considering the representation and the chronology of dates as placed before us is as follows:

<i>'Representation dated</i>	<i>..</i>	<i>07.11.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>10.11.2022</i>
<i>File submitted on</i>	<i>..</i>	<i>17.11.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>17.11.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>17.11.2022</i>
<i>Minister dealt with on</i>	<i>..</i>	<i>21.11.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>21.11.2022</i>
<i>Rejection letter sent to the detenu on</i>	<i>..</i>	<i>21.11.2022</i>

Govt. Holidays:

12.11.2022, 13.11.2022, 19.11.2022 and 20.11.2022'

9. A careful perusal of the list of dates brings to light that there is five days delay in considering the representation. As regards making an effective representation against a preventive detention order, the same is a constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. If this constitutional safeguard is hampered, it vitiates the impugned detention order. We also hasten to make it clear that there cannot be any straight jacket formula with



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regard to number of days within which a representation has to be disposed of. Delay in considering the representation point has to be dealt with on a case to case basis. Considering the facts and circumstances of the case and the nature of the matter, we find that this delay has caused infraction of the detenu's rights *qua* the preventive detention order. We find that the delay of five days excluding four public/Government holidays is not justified and the point urged by the petitioner enures to the benefit of the petitioner.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.10.2022 bearing reference BCDFGISSSV No. 344/2022 made by the second respondent is set aside and the detenu Thiru.Raja, male, aged 33 years, Son of Thiru.Iyyanar, 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.)
24.04.2023

Index : Yes
Neutral Citation : Yes
mmi

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

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To

- 1.The Secretary to Government,
Prohibition and Excise Department (Home),
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Chennai City, Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.
- 4.The Inspector of Police,
F-3 Nungambakkam Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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