



H.C.P.No.2283 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.2283 of 2022

Govindappa

.. Petitioner

Vs

The State rep. By its

- 1.The Additional Chief Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Krishnagiri District, Krishnagiri.
- 3.The Superintendent of Police,
Krishnagiri District, Krishnagiri.
- 4.The Superintendent of Prison,
Salem Central Prison, Salem.
- 5.The Inspector of Police,
Kelamangalam Police Station,
Denkanikottai, Krishnagiri District.

.. 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

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pertaining to the order of detention dated 28.07.2022 passed by the second respondent in S.C.No.20 of 2022 and quash the same and produce the detenu Sivanantha @ Kabali, aged about 25 years, S/o.Govindappa, detained at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Ms.S.Lakshmi
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 father of detenu assailing a 'preventive detention order dated 28.07.2022 bearing reference S.C.No.20/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is 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



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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 four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.143 of 2022 on the file of Kelamangalam Police Station for alleged offences under Section 392 r/w 397 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. Ms.S.Lakshmi, 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.



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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 11.06.2022 but the impugned detention order has been made only on 28.07.2022.

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 State Additional Public 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 Substances Act, 1988' [hereinafter



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'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 28.07.2022 bearing reference S.C. No.20/2022 made by the second respondent is set aside and the detenu Thiru.Sivanantha @ Kabali, male, aged 25 years, son of Thiru.Govindhappa 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.)
15.03.2023

Index : Yes / No

Neutral Citation : Yes / No

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

To

- 1.The Additional Chief Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
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4.The Superintendent of Prison,
Salem Central Prison, Salem.

5.The Inspector of Police,
Kelamangalam Police Station,
Denkanikottai, Krishnagiri District.

6.The Public Prosecutor,
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,**

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