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HCP No.2377 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.2377 of 2022

Pappammal

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.

2.District Magistrate and District Collector,
O/o.Tiruppur District, Tiruppur.

3.The Inspector of Police,
Palladam Police Station,
Tiruppur.

4.Superintendent of P.Olice,
District Police Office,
Angeripalayam Main Road,
Tiruppur – 641 603.

5.Superintendent of Prison,
Dr.Nanjapaa Road, ATT Colony,
Gopalapuram, Gandhipuram,
Coimbatore – 641 018.

... Respondents



HCP No.2377 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the petitioner's grandson Marees @ Marreshwaran son of Ganesan male aged 25 years detained under Act 14/1982 vide order Cr.M.P.No.40/GOONDA/2022 dated 26.07.2022 and now confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith by call for records and setting aside the order of detention bearing Cr.M.P.No.40/GOONDA/2022 dated 26.07.2022 on the file of the second respondent.

For Petitioner : Mr.R.Hariharan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the grandmother of the detenu assailing a 'preventive detention order dated 26.07.2022 bearing reference Cr.M.P.No.40/GOONDA/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the third respondent is the



HCP No.2377 of 2022

sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the 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 no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.490 of 2022 on the file of Palladam Police Station for alleged offences under Section 302 '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.



HCP No.2377 of 2022

WEB COPY

4.Mr.R.Hariharan, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for 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 22.05.2022 but the impugned detention order has been made only on 26.07.2022.

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 is unacceptable.

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



HCP No.2377 of 2022

(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.Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.07.2022 bearing reference Cr.M.P.No.40/GOONDA/2022 made by the second respondent is set aside



HCP No.2377 of 2022

and the detenu Thiru.Marees alias Mareeswaran, aged 26 years, son of Thiru.Ganesan, 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.)
08.03.2023

Index: Yes/No

Neutral Citation : Yes/No

cse

Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.



HCP No.2377 of 2022

To

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Coimbatore – 641 018.
6. The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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HCP No.2377 of 2022

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

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