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H.C.P.No.2573 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2573 of 2022

Komala

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by The Additional Chief Secretary
to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Avadi City, Office of the Commissioner of Police
[Goondas Section], Avadi,
Chennai – 600 054.

3.The Superintendent of Prison,
Central Prison-II, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
T-12 Poonamallee Police Station,
Thiruvallur District.

.. Respondents

Page Nos.1/9



H.C.P.No.2573 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent on 11.10.2022 in BCDFGISSSV No.137/2022 against the detenu Subash, son of Selvanathan, male, aged about 23 years who is now confined at Central Prison, Puzhal [3rd respondent herein] and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
for Mr.P.Parthiban

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 mother of detenu assailing a 'preventive detention order dated 11.10.2022 bearing reference No.137/BCDFGISSSV/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.

Page Nos.2/9



H.C.P.No.2573 of 2022

WEB COPY

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 one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.450/2022 on the file of T-12 Poonamallee Police Station for alleged offences under Sections 147, 148, 341 and 302 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.V.Paarthiban, learned counsel representing Mr.P.Parthiban,



H.C.P.No.2573 of 2022

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.This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 06.04.2023, which reads as follows:

'When the matter was taken up, Mr.V.Paarthiban, learned counsel appearing on behalf of counsel for petitioner submitted that the date of surrender and remand of the detenu in the ground case is 29.07.2022 whereas the impugned preventive detention order is dated 11.10.2022. Learned counsel submitted that the 'live and proximate link' between the grounds of detention and avowed purpose of detention has snapped. It was the further submission of learned counsel that ground case had become stale as on the date of the impugned preventive detention order.

2.On the above point, learned Prosecutor sought for short accommodation to get instructions and revert to this Court.



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H.C.P.No.2573 of 2022

3.We make it clear that the above is one of the points that is being urged and depending on the response by the Prosecutor, if necessary, the other points which are to be canvassed by the learned counsel for the petitioner in his campaign against the impugned detention order will be considered. At the request of State Additional Public Prosecutor, list this matter on Monday.

4.List on 17.04.2023.'

6.Adverting to the aforesaid proceedings, learned Prosecutor submits that other than the counter filed earlier, there is no further instructions. This means that the time gap between the date of surrender and remand of the detenu and the date of impugned detention order leading to snapping of live and proximate link between the grounds of detention and purpose of detention stands unexplained.

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



H.C.P.No.2573 of 2022

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**



H.C.P.No.2573 of 2022

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.

10.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.10.2022 bearing reference No.137/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Subash, male, aged 23 years, son of Thiru.Selvanathan 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.)

17.04.2023

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, Puzhal, Chennai.



H.C.P.No.2573 of 2022

To
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- 1.The Additional Chief Secretary to Government,
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- 2.The Commissioner of Police,
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Office of the Commissioner of Police
[Goondas Section], Avadi,
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- 5.The Public Prosecutor
High Court, Madras.



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

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H.C.P.No.2573 of 2022

17.04.2023

Page Nos.9/9