



H.C.P.No.2560 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.2560 of 2022

L.Kamali

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Perambalur District,
Peruambalur.

3.The Superintendent of Central Prison,
Trichirappalli.

4.The Inspector of Police,
Perambalur Police Station,
Perambalur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus calling for the entire records leading to the detention of petitioner's elder brother who is detained as Goonda at 3rd respondent/Central Prison, Tiruchirappalli by the 2nd respondent vide his order Cr.M.P.No.30/2022 dated 26.08.2022 and set aside the same as illegal and consequently direct the 4th respondent to produce the body of the detenu Kamal S/o.Arumugam, aged about 29 years from the 4th respondent before this Court and set him at liberty.

For Petitioner : Mr.Lourdu Paul Maurya
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 sister of detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference Cr.M.PNo.30/2022' [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.



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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.496/2022 on the file of Perambalur Police Station for alleged offences under Sections 302, 201, 394 and 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.Mr.Lourdu Paul Maurya, learned counsel on record for petitioner



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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 surrender in the ground case is 10.07.2022 but the impugned detention order has been made only on 26.08.2022.

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 of Illicit Traffic in Narcotic Drugs and Psychotropic



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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**



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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 26.08.2022 bearing reference Cr.M.P.No.30/2022 made by the second respondent is set aside and the detenu Thiru.Kamal, male, aged 29 years, son of Thiru.Arumugam 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.)

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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, Tiruchirappalli.



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To
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- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Perambalur District,
Peruambalur.
- 3.The Superintendent of Central Prison,
Trichirappalli.
- 4.The Inspector of Police,
Perambalur Police Station,
Perambalur.
- 5.The Public Prosecutor
High Court, Madras.



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

cse

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