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H.C.P.No.17 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.17 of 2023

Sivaraman

..

Petitioner/
Father of Detenu

Vs.

1.State of Tamil Nadu rep. by its
Additional Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.

2.The District Magistrate & District Collector,
Tiruppur District, Tiruppur.

3.The Superintendent of Prison,
Special Prison for Women,
Coimbatore.

4.The Superintendent of Police,
Tiruppur District.

5.The Inspector of Police,
Palladam Police Station,
Tiruppur District.

..

Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records pertaining to the detention order passed by the second respondent in Cr.M.P.No.45/Goonda/2022 dated 26.07.2022 and set aside the same and direct the respondents to produce the petitioner's daughter namely Susila W/o. (Late) Gopa, aged about 30 years who is now confined in Special Prison for Women at Coimbatore before this Court and set her at liberty.

For Petitioner : Mr.M.Vijayaragavan
For Respondents : Mr.R.Muniyapparaj
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 the father of detenu assailing a 'preventive detention order dated 26.07.2022 bearing reference Cr.M.P.No.45/Goonda/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.



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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.490 of 2022 on the file of Palladam Police Station for alleged offences under Section 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.M.Vijayaragavan, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor 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 12.05.2022 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 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 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 in 2023/MHC/334, **Sadik Basha Yusuf Vs. The State of Tamil Nadu and others** reported in 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 26.07.2022 bearing reference Cr.M.P.No.45/Goonda/2022 made by the second respondent is set aside and the detenu Tmt.Susila, female, aged 30 years, wife of Thiru.Gopal (Late) 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 Special Prison for Women, Coimbatore.



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To

1. The Additional Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
2. The District Magistrate & District Collector,
Tiruppur District, Tiruppur.
3. The Superintendent of Prison,
Special Prison for Women,
Coimbatore.
4. The Superintendent of Police,
Tiruppur District.
5. The Inspector of Police,
Palladam Police Station,
Tiruppur District.
6. The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

cse

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