

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, MADRAS BENCH  
THE HON'BLE MR. JUSTICE M. SUNDAR , THE HON'BLE MR. JUSTICE M.  
NIRMAL KUMAR

HCP NO. 1381 OF 2022

06.02.2023

D.Mala W/o.Dhanushkodi

*... Petitioner*

v.

The Secretary, Prohibition and Excise Department (Home), Government of Tamil Nadu, Fort St.George, Chennai-9 & Ors.

*... Respondents*

**Constitution of India (Article 226) — Writ of Habeas Corpus — Preventive Detention — Prolonged and unexplained delay in issuing detention order severed the live and proximate link between grounds and purpose — Preventive detention should not become punitive — Detention order invalid — Detenu released.**

**Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — PIT NDPS Act — Delay in passing preventive detention order — Unexplained or unreasonable delay severs the 'live and proximate link' — Preventive detention should not become punitive — Detention invalid — Detenu released.**

**The Indian Penal Code (45 of 1860) — Preventive Detention — Unexplained 53-day gap between remand and detention order — Proximate link severed — Detention set aside.**

**Arms Act, 1959 — Preventive Detention under §. 25(1A) — Unexplained 53-day delay between arrest and detention order — Live and proximate link severed — Detention invalid — Detenu released.**

**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 — Preventive Detention — Detenu branded as 'Goonda' under §. 2(f) — Two-month unexplained delay severed live and proximate link — Preventive detention should not become punitive — Detention order set aside — Detenu released.**

**FACTS.** On 19.04.2022, the detenu was arrested in connection with Crime No.167 of 2022 for alleged offences under Section 399 of the Indian Penal Code and Section 25(1A) of the Arms Act, 1959. The District Collector issued a detention order on 11.06.2022, branding the detenu as a 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities Act, 1982, 53 days after the detenu's remand. The petitioner, the detenu's spouse, filed a habeas corpus petition under Article 226 of the Constitution on 13.07.2022, challenging the detention on the ground of undue delay between arrest and issuance of the order. The High Court reviewed

whether this delay severed the link between the grounds of detention and its purpose, examining the timeline and factual setting before arriving at its decision.

**PRAYER.** Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the 2nd respondent in C.O.C.No.342022 dated 11.06.2022 and set aside the same and direct the 2nd respondent to produce the detenu Vandu @ Dahnaraj, Son of Dhanushkodi aged about 21 years, now confined in Central Prison, Trichy before this Hon'ble Court and set him at liberty.

#### **ISSUES OF LAW.**

- Whether the alleged delay in passing the detention order was unexplained and unreasonable
- Whether such delay invalidates the detention by severing the link between the grounds of detention and its purpose.

**SUMMARY.** A habeas corpus petition was filed challenging the preventive detention of the detenu, who was arrested for alleged offences under Section 399 of the Indian Penal Code and Section 25(1A) of the Arms Act, 1959. The petitioner asserted that the significant delay between arrest and the detention order severed the connection between the grounds and purpose of detention. The State maintained that no fixed timeline governs such orders and defended the detention as justified. Referring to precedent, the Court concluded that unexplained and unreasonable delay in issuing a preventive detention order can invalidate it. The Court declared the order void and directed the detenu's release.

**HELD.** The Court held that the prolonged and unexplained delay dissolved the live and proximate link between the grounds for detention and its purpose. Consequently, the detention was deemed invalid and set aside. The detenu was directed to be released forthwith if not required in any other matter, emphasizing that preventive detention should not become punitive.

**FINAL STATUS.** Allowed.

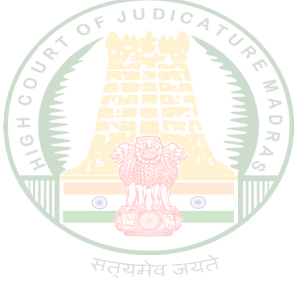
#### **CASES REFERRED**

Sushanta Kumar Banik vs State of Tripura & Others, 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333

#### **COUNSELS**

Mr.S.Vellidoss, representing Mr.Veerapillai Ramesh (for Petitioner)  
Mr.R.Muniyapparaj, Additional Public Prosecutor (for Respondents)

**Judgment Pronounced on 06.02.2023**



H.C.P.No.1381 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

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

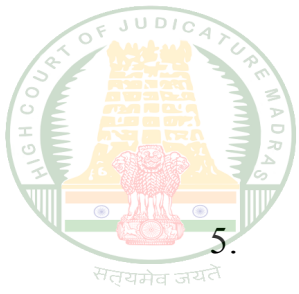
H.C.P.No.1381 of 2022

D.Mala  
W/o.Dhanushkodi

.. Petitioner

Vs.

1. The Secretary  
Prohibition and Excise Department (Home)  
Government of Tamil Nadu  
Fort St.George  
Chennai-9.
2. The District Collector and District Magistrate  
Nagapattinam  
Nagapattinam District.
3. The Superintendent of Central Prison  
Trichy Central Prison  
Trichy.
4. The Superintendent of Police  
Nagapattinam District.



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5. The Inspector of Police  
Kilvelur Police Station  
Nagapattinam 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 of the 2nd respondent in C.O.C.No.342022 dated 11.06.2022 and set aside the same and direct the 2nd respondent to produce the detenu Vandu @ Dahnaraj, Son of Dhanushkodi aged about 21 years, now confined in Central Prison, Trichy before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Vellidoss representing Mr.Veerapillai Ramesh
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

### **ORDER**

**[Order of the Court was made by M.SUNDAR, J.,]**

Captioned HCP has been filed in this Court on 13.07.2022 assailing a 'detention order dated 11.06.2022 bearing reference No.C.O.C.No.34/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., jurisdictional District Collector [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent i.e., jurisdictional Inspector of Police is the Sponsoring Authority.

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2. Mr.S.Vellidoss, learned counsel on record for petitioner (to be noted, spouse of the detenu is the petitioner before us) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the five respondents are before us.

3. Suffice to say that the impugned detention order has been made by the Detaining Authority on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of '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].

4. The Ground case is Crime No.167 of 2022 for alleged offences under Section 399 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 25(1A) of Arms Act, 1959. To be noted, ground case is on the file of the fifth respondent who is



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the Sponsoring Authority. It may not be necessary to be detained further by facts as the learned counsel for the petitioner points out that there is delay in making the impugned detention order and in this regard learned counsel draws our attention to Ground (IV) of the support affidavit which reads as follows:

*'IV. It is submitted that the detenu was arrested on 19.04.2022 and the detention order has been passed almost after the lapse of two months on 11.06.2022. Therefore, the apprehension of the respondent is baseless and the impugned detention order is liable to be set-aside.'*

Aforementioned ground (IV) has been met by State in the counter affidavit dated 23.11.2022 and relevant portion in the counter affidavit reads as follows:

*'Ground IV : It is respectfully submitted that the averments of the petitioner herein in grounds 'IV' of the affidavit are false since the detention order had been passed within the time limit prescribed. There was no delay in passing the detention order as claimed by the petitioner.'*

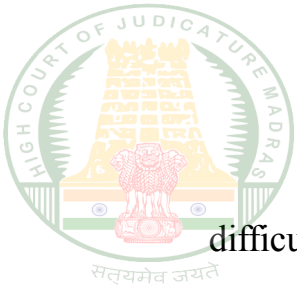


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5. As regards delay in making the impugned detention order, to put it

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in legal parlance, it is a point which turns on 'live and proximate link between the grounds of detention and purpose of detention snapping', we draw inspiration from **Banik** case law [*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 'PIT NDPS Act' for the sake of brevity] in Tirupura, 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 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'. In the light of the manner in which the ground (IV) has been articulated in the support affidavit and the manner in which this ground (IV) has been met by the State in the counter affidavit (to be noted, most relevant portions are extracted and reproduced elsewhere supra in this order) we have no



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difficulty in persuading ourselves to say that the case on hand falls on the category of unexplained delay. We also deem it appropriate to add that there is no prescribed time limit for making the impugned detention order. We deem it appropriate and necessary to make this obtaining position clear owing to the manner in which this point has been met in the counter affidavit. As held by Hon'ble Supreme Court in **Banik** case law, 'live and proximate link' between the grounds of detention and purpose of detention snapping point should be examined on a case to case basis. In the case on hand, there are two adverse cases, one ground case and that ground case is for alleged offences under Section 399 IPC and 25(1A) of Arms Act, 1959.

6. In the light of the narrative thus far, we have no difficulty in persuading ourselves that the impugned detention order made by the Detaining Authority 53 days post remand in the ground case is one where 'live and proximate link between the grounds of detention and purpose of detention' has snapped. To put it differently, the impugned detention order has been made on the basis of a State case.





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7. Before concluding, we also remind ourselves that preventive

detention is not a punishment and HCP is high prerogative writ.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.06.2022 bearing reference C.O.C.No.34/2022 made by the second respondent is set aside and the detenu Thiru.Vandu @ Dhanaraj, son of Mr.Dhanuskodi is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

9. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

06.02.2023

Index : Yes / No

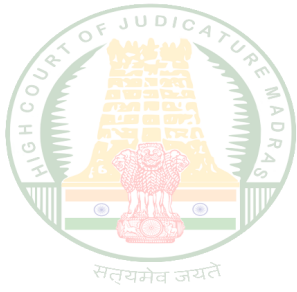
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**P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Thiruchirappalli.**

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

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To

1. The Secretary  
Prohibition and Excise Department (Home)  
Government of Tamil Nadu  
Fort St.George,  
Chennai-9.
2. The District Collector and District Magistrate  
Nagapattinam, Nagapattinam District.
3. The Superintendent of Central Prison  
Trichy Central Prison, Trichy.
4. The Superintendent of Police  
Nagapattinam District.
5. The Inspector of Police  
Kilvelur Police Station  
Nagapattinam District.
6. The Public Prosecutor  
High Court, Madras.

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