



H.C.P.Nos.518 & 559 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.Nos.518 and 559 of 2023

P.Mallika

.. Petitioner in
H.C.P.No.518 of 2023

K.Jayanthi

.. Petitioner in
H.C.P.No.559 of 2023

Vs

- 1.State of Tamil Nadu rep. By its Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Thiruvannamalai, Thiruvannamalai District.
- 3.The Superintendent of Prison,
Central Prison, Vellore, Vellore District.
- 4.The Superintendent of Police,
Thiruvannamalai, Thiruvannamalai District.
- 5.The Inspector of Police,
Arani Town Police Station,
Thiruvannamalai District.

.. Respondents
in both HCPs

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H.C.P.Nos.518 & 559 of 2023

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Prayer in H.C.P. No.518 of 2023: 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 detention dated 04.03.2023 in detention order D.O.No.25/2023-C2 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Saravanan, S/o.Pari, Hindu, aged about 33 years, who is now confined in Central Prison, Vellore, before this Court and set him at liberty.

Prayer in H.C.P. No.559 of 2023: 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 detention dated 04.03.2023 in detention order D.O.No.26/2023-C2 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Kumaran, S/o.Perumal, Hindu, aged about 37 years, who is now confined in Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner	:	Mr.R.Krishnakumar in both HCPs
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor in both HCPs



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H.C.P.Nos.518 & 559 of 2023

COMMON ORDER

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

This common order will now dispose of captioned two 'Habeas Corpus Petitions' (hereinafter 'HCPs' for the sake of convenience and clarity).

2. When the captioned HCPs were listed in the Admission Board on 05.04.2023 and 12.04.2023 respectively, the following orders were made:

H.C.P.No.518 of 2023
M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 24.03.2023 inter alia assailing a detention order dated 04.03.2023 bearing Reference D.O. No.25/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Mr.R.Thamaraiselvan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground



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H.C.P.Nos.518 & 559 of 2023

case qua the detenu is for 'man missing' subsequently altered into one under Section 364 A of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.10 of 2023 on the file of Arni Town Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under 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].

5. The detention order has been assailed inter alia on the grounds that some of the pages in the booklet furnished to the detenu are not legible and the remand order and remand extension order have not been furnished to the detenu.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

'H.C.P.No.559 of 2023

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 24.03.2023 inter alia assailing a detention order dated 04.03.2023 bearing reference D.O.No.26/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth



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respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 364A altered to Sections 147, 364A, 302, 201 read with 120(B) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.10 of 2023 on the file of Arni Town Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under 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].

5. The detention order has been assailed inter alia on the ground that some pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

3. The aforementioned Admission Board orders capture all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board orders shall be read as an integral part and parcel of this order. Be that as it may, we are using the short



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forms, short references and abbreviations used in the Admission Board orders in this order also for the sake of convenience and clarity. To be noted, 'detention orders dated 04.03.2023 bearing reference D.O.No.25/2023-C2 and D.O.No.26/2023-C2 respectively' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention orders' in this order for the sake of brevity, convenience and clarity.

4. When the matter was taken up, Mr.R.Krishna Kumar, learned counsel for petitioner in both captioned HCPs and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all the respondents in both captioned HCPs are before us.

5. We are informed that totally there are seven accused in the ground case including the two detenus in the captioned HCPs. All seven accused were clamped with preventive detention orders. As regards five accused (excluding both detenus in the captioned HCPs), the preventive detention orders were challenged in this Court by way of five HCPs and those HCPs have been allowed. There is also no disputation or disagreement on the point on which the five HCPs were allowed is available (to the detenu in the captioned two HCPs also) in



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the petitioners' campaign against the impugned preventive detention orders.

6. This Court with the intention of not burdening this order with all the five HCPs orders deems it appropriate to scan and reproduce two of the orders i.e., *C.Suganya's case* (being order dated 10.08.2023 in H.C.P. No.747 of 2023) reported vide Neutral Citation of Madras High Court being **2023:MHC:3708** and *S.Abina's case* (being order dated 10.08.2023 in H.C.P. No.847 of 2023) reported vide Neutral Citation of Madras High Court being **2023:MHC:3778**. A scanned reproduction of these two orders is as follows:.



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WEB COPY 2023:MHC:3708



H.C.P.No.747 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

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CORAM

THE HONOURABLE MR.JUSTICE MSUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.747 of 2023

C.Suganya
W/o.Veeramani

.. Petitioner

Vs.

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai.
3. The Superintendent of Police
Tiruvannamalai
Tiruvannamalai District.
4. The Superintendent of Prison
Central Prison, Vellore.
5. State By
Inspector of Police
Arni Town Police Station
Tiruvannamalai District.

.. Respondents

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H.C.P.No.747 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for the records pertaining to the order of detention passed by the second respondent herein made in D.O.No.30/2023-C2 dated 04.03.2023 and to set aside the same and directing the fourth respondent to produce the detenu my Husband Viz, Veeramani, aged 32 years, S/o.Periyasamy now confined in Central prison, Vellore before this Honble Court and thereby setting him at liberty.

For Petitioner : Mr.Nagoor Moideen
representing Mr.R.Krishnakumar
For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 01.06.2023, this Court made the following order:

'H.C.P.No.747 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this

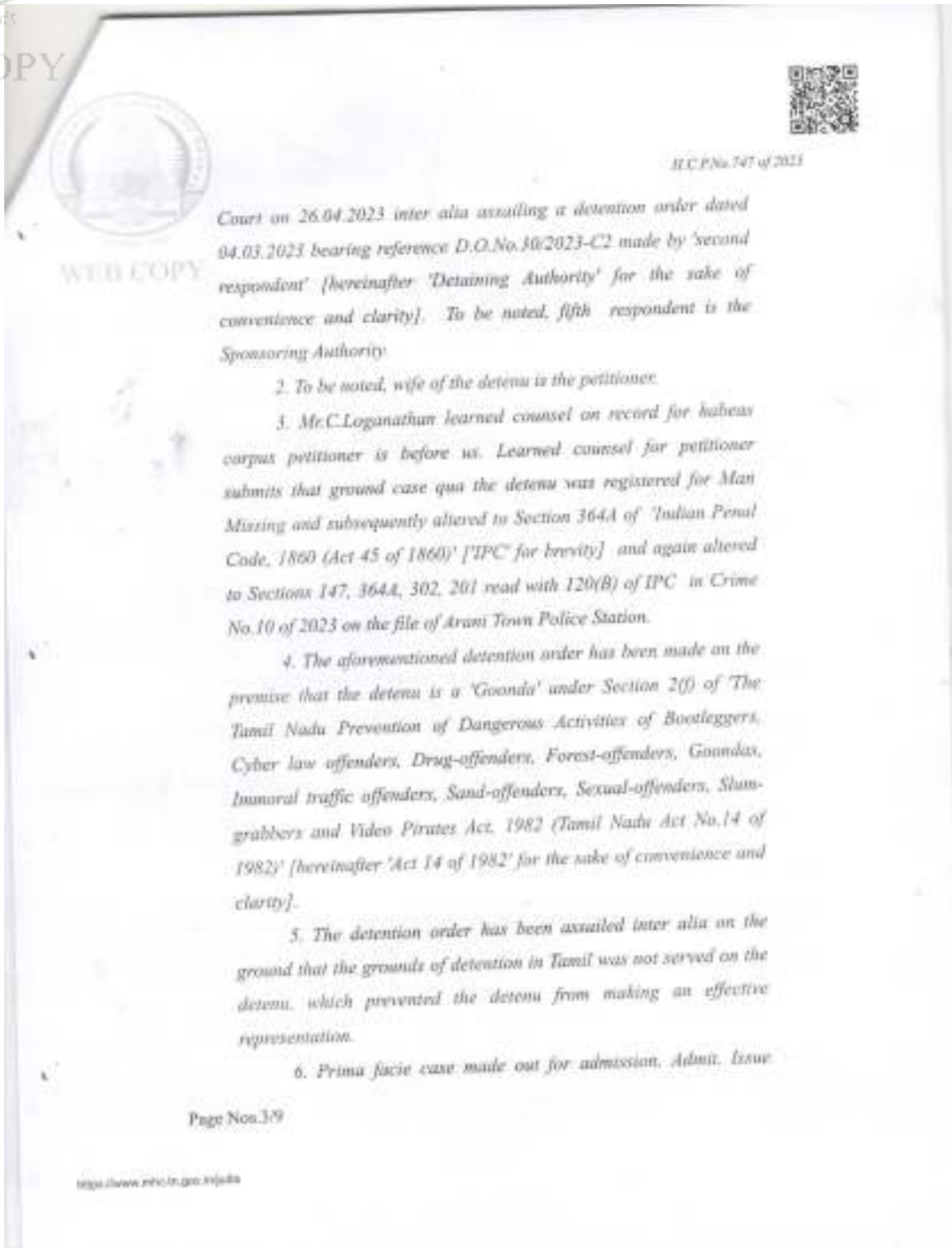
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H.C.P.No.747 of 2023

Rule nisi returnable by four weeks.

*7. Mr.R.Muntyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.**

2. The aforementioned Admission Board order captures the essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.M.Nagoor Moideen, learned counsel representing the counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for all respondents are before us.

4. At the time of admission i.e., in the Admission Board, the point that the grounds of detention in Tamil was not served on the detenu, which prevented the detenu from making an effective representation was urged but in the final hearing Board today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point

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H.C.P.No.747 of 2023

and that one point is 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 19.01.2023 but the impugned preventive detention order has been made only on 04.03.2023.

5. Mr.A.Gokulakrishnan, 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.

6. 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 Substances Act, 1988' [hereinafter 'PITNDPS Act' for the sake of brevity] in Tripura, wherein after considering a proposal by a Sponsoring Authority and after noticing the trajectory the matter took, Hon'ble Supreme Court

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H.C.P.No.747 of 2023

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.

7. 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* reported vide Neutral Citation of Madras High Court being 2023:MHC:1159 and a series of other orders in HCP cases.

8. To be noted, the sole substratum of the impugned preventive

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H.C.P.No.747 of 2021

detention order is a solitary case viz., Crime No.10 of 2023 on the file of
Arni Town Police Station registered for 'Man Missing' and subsequently
altered into Section 364A of IPC and again altered into Sections 147, 364A,
302, 201 of IPC read with 120(B) of IPC.

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
preventive detention order dated 04.03.2023 bearing reference
D.O.No.30/2023-C2 made by the second respondent is set aside and the
detenu Thiru.Veeramani, male, aged 32, son of Thiru.Periyasami, 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.)

(R.S.V.,J.)

10.08.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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

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H.C.P.Nos.518 & 559 of 2023

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2023:MHC:3778



H.C.P.No.847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.847 of 2023

S.Abina
W/o.Srithar

.. Petitioner

Vs.

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai District.
3. The Superintendent of Police
Tiruvannamalai
Tiruvannamalai District.
4. The Superintendent of Prison
Central Prison, Vellore.
5. State By
Inspector of Police
Arni Town Police Station
Tiruvannamalai District.

.. Respondents

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H.C.P.No.847 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for the records pertaining to the order of detention passed by the second respondent herein and made in D.O.No.31/2023-C2 dated 04.03.2023 and to set aside the same and directing the fourth respondent to produce the detenue petitioner's husband viz., Srithar, aged 34 years, S/o.Ganapathy, now confined Central Prison, Vellore this Honble Court and thereby setting him at Liberty.

For Petitioner	:	Mr.Nagoor Moideen representing Mr.R.Krishnakumar
For Respondents	:	Mr.A.Gokulakrishnan 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 wife of the detenu assailing a 'preventive detention order dated 04.03.2023 bearing reference D.O.No.31/2023-C2' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.

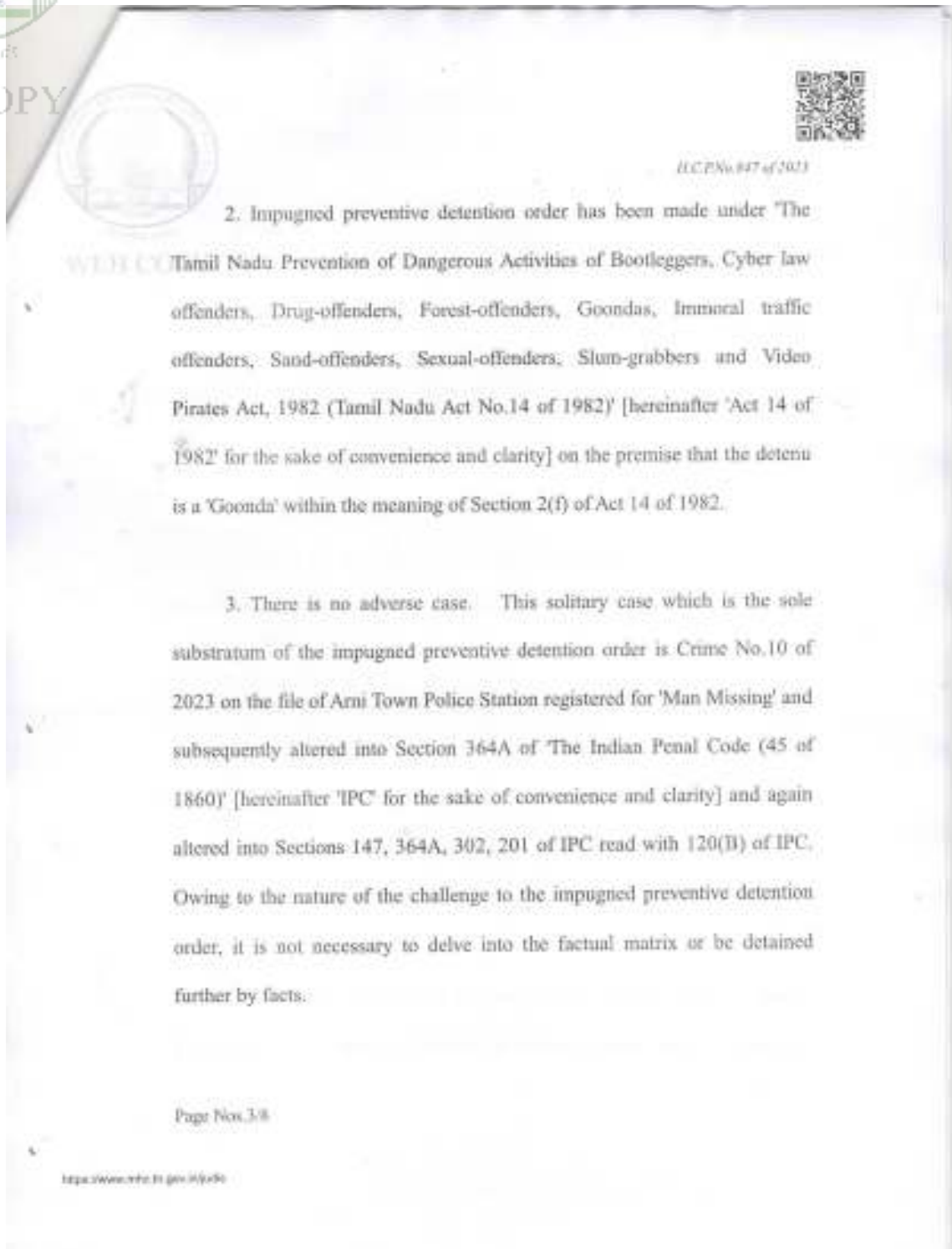
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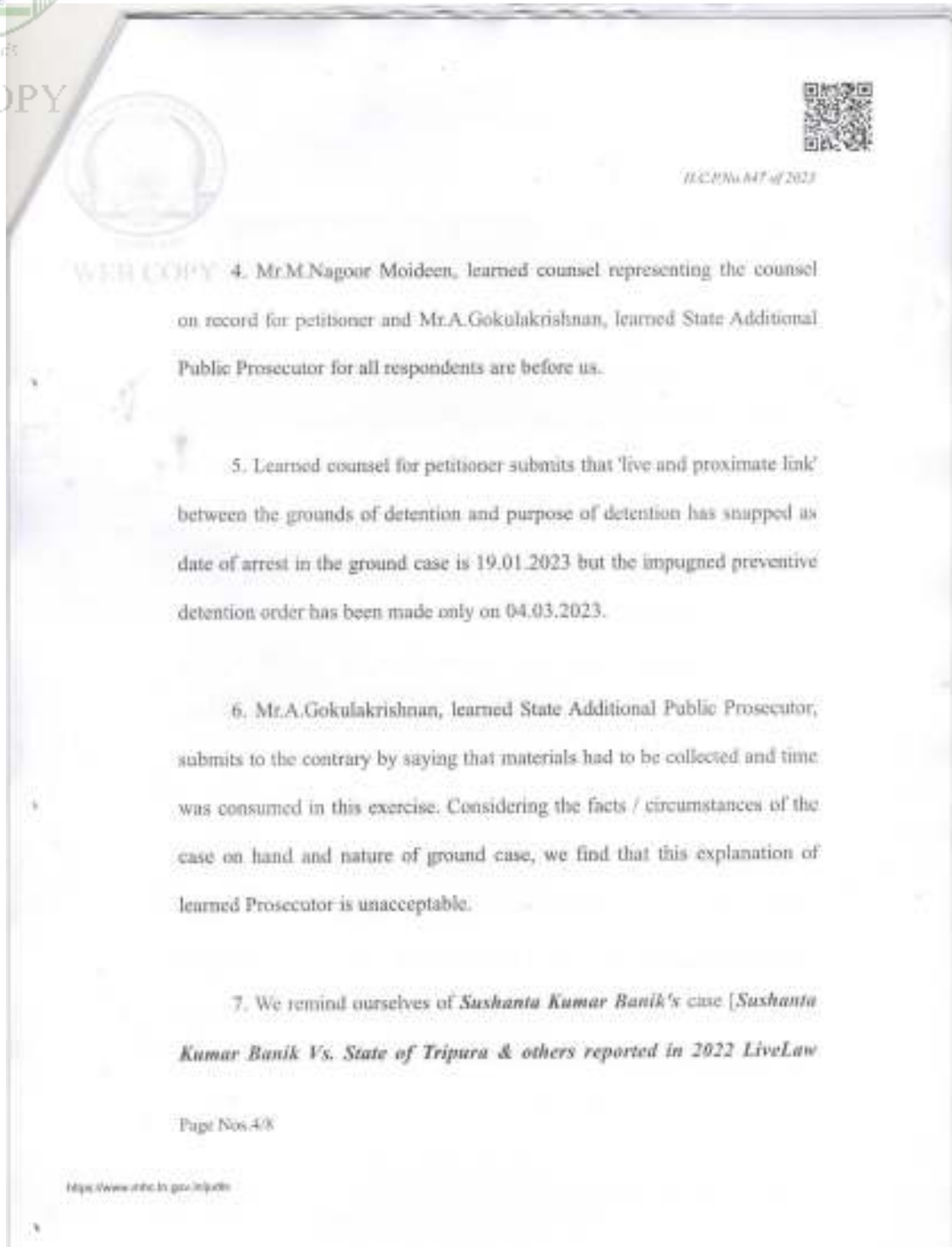
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H.C.P.Nos.518 & 559 of 2023

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H.C.P.No.847 of 2023

(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 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*

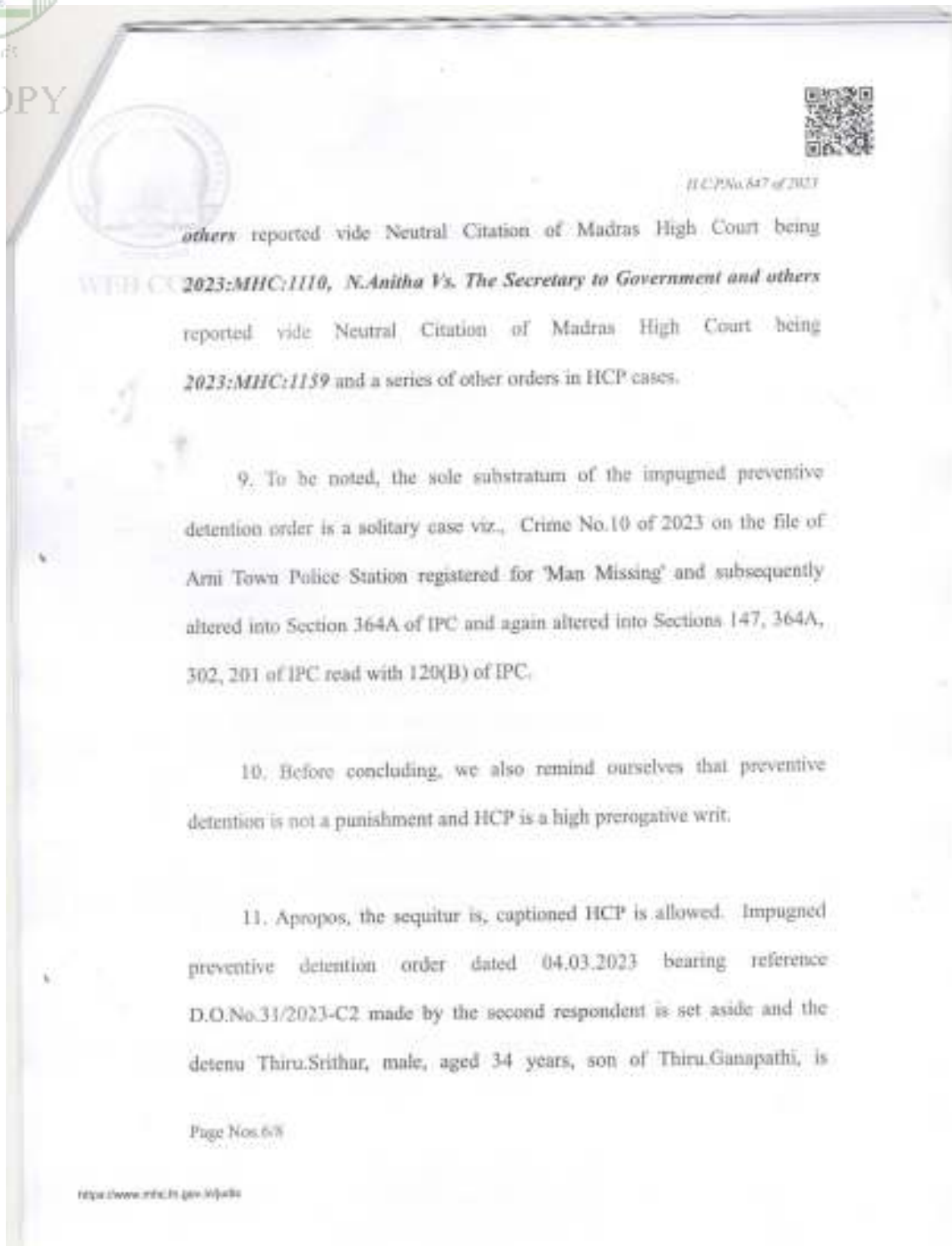
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H.C.P.No.847 of 2023

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.)

(R.S.V.,J.)

10.08.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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

To

1. The Additional Chief Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. District Collector and District Magistrate
Tiruvannamalai District
Tiruvannamalai District.
3. The Superintendent of Police
Tiruvannamalai
Tiruvannamalai District.
4. The Superintendent of Prison
Central Prison, Vellore.
5. State By
Inspector of Police
Arni Town Police Station
Tiruvannamalai District.
6. The Public Prosecutor
High Court, Madras.

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7. As there is no dispute or contestation that the same point on which the aforementioned two HCPs were allowed is available to the detenu in the captioned two HCPs also, in both the captioned HCPs, the respective impugned preventive detention orders are set aside and both the captioned HCPs are allowed.

8. Ergo, the sequitur is, captioned HCP (H.C.P. No.518 of 2023) is allowed. Impugned preventive detention order dated 04.03.2023 bearing reference D.O.No.25/2023-C2 made by the second respondent is set aside and the detenu Thiru.Saravanan, aged 33 years, son of Thiru.Pari, 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.

9. Apropos, the sequitur is, captioned HCP (H.C.P. No.559 of 2023) is allowed. Impugned preventive detention order dated 04.03.2023 bearing reference D.O.No.26/2023-C2 made by the second respondent is set aside and the detenu Thiru.Kumaran, aged 37 years, son of Thiru.Perumal, is directed to be set at liberty



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forthwith, if not required in connection with any other case / cases.

There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)

21.08.2023

Index : Yes/No

Neutral Citation : Yes/No

mmi

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

To

- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Thiruvannamalai, Thiruvannamalai District.
- 3.The Superintendent of Prison,
Central Prison, Vellore, Vellore District.
- 4.The Superintendent of Police,
Thiruvannamalai, Thiruvannamalai District.
- 5.The Inspector of Police,
Arani Town Police Station,
Thiruvannamalai District.
- 6.The Public Prosecutor,
High Court, Madras.

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H.C.P.Nos.518 & 559 of 2023

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

H.C.P.Nos.518 and 559 of 2023

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