



HCP(MD)No.173 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.173 of 2023

Marikannu

: Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in impugned detention order P.D.O.No.45/2022 dated 28.11.2022 under Section 2(ggg) of Tamil Nadu Act 14/1982 as an "Sexual Offender" and quash the same and direct the respondents to produce the Detenue namely Periyakaruppan @ Shanmugavel S/o.Verrappan Male aged about 19 years, who is detained in Central Prison, Tiruchirapalli, before this Court and set him at liberty.

For Petitioner : Ms.R.Vanitha

for Mr.A.Joseph Jerry

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

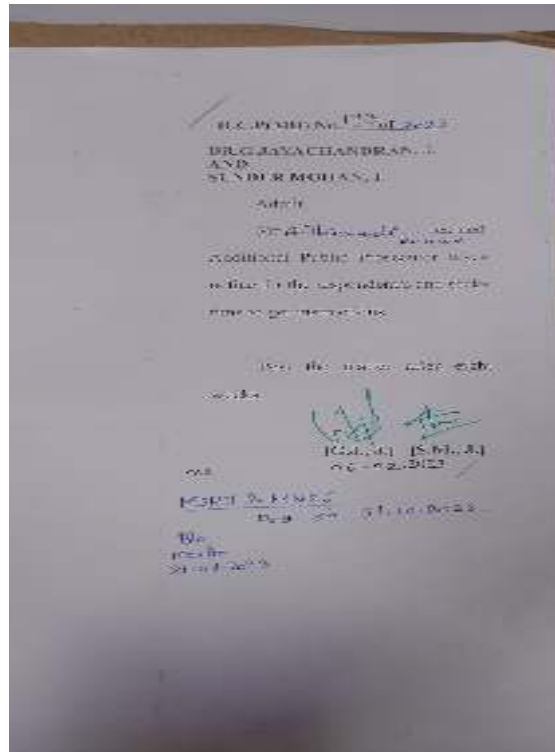
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 06.02.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



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2. It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.

3. Today, the captioned matter is in the Final Hearing Board.

4. Ms.R.Vanitha, learned Counsel representing the Counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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5. Captioned HCP has been filed by the sister of the detenu assailing a 'preventive detention order dated 28.11.2022 bearing reference P.D.O.No.45/2022' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Thirumayam All Women Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

6. Impugned preventive 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.



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7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.06 of 2022 on the file of Thirumayam All Women Police Station for alleged offences under Sections 5(l), 5(m) r/w 6(1) of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity] and Section 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8. In the support affidavit *qua* captioned HCP several grounds have been raised but learned Counsel for petitioner predicated his campaign against the impugned Preventive Detention Order on the point that the detenu was arrested on 14.09.2022 but the impugned preventive detention order has been made only on 28.11.2022 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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9. Mr.A.Thiruvadi Kumar, 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.

10. 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 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.



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11. 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 similar orders in HCP cases.

12. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.06 of 2022 on the file of Thirumayam All Women Police Station for alleged offences under Sections 5(l), 5(m) r/w 6(1) of POCSO Act and Section 506(i) of IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order.



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13. This Bench is informed by the learned Additional Public Prosecutor on instructions that in the solitary case final report has been filed within the prescribed time line and the same is now on the file of Special Court for, POCSO Cases, Pudukkottai in Spl.S.C.No.6 of 2022. To be precise, charge sheet is dated 21.11.2022 and the same has been filed on the same day. As it is submitted that charge sheet has been filed within the prescribed time the detenu will have to move for regular bail. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail application on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.

14. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.11.2022 bearing reference P.D.O.No.45/2022 made by the second respondent is set aside and the detenu Thiru.Periyakaruppan @ Shanmugavel, male, aged 19 years,



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son of Veerappan, 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.]
31.10.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

MR

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



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To

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- 2.The District Collector & District Magistrate,
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Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

ORDER MADE IN
H.C.P.(MD)No.173 of 2023

31.10.2023