



HCP(MD)No.518 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.518 of 2023

R.Shanthi

: Petitioner

Vs.

- 1.The Additional Chief Secretary to Government
of Tamil Nadu,
Home, Prohibition and Excise (XIV) Department,
Secretariat, Fort St. George, Chennai – 600 009.
- 2.The District Collector cum District Magistrate,
Sivagangai, Sivagangai District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Inspector of Police,
Nachiyarpuram Police Station,
Sivagangai District.

: 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 detention order vide Cr.M.P.No.3/S.O./2023 dated 29.03.2023 passed by the 2nd respondent and set aside the same by setting the detenu namely R.Ramakrishnan, S/o.Ramalingam, aged about 48/2022 years and set him at liberty, now detained at Central Prison, Madurai..

For Petitioner : Mr.V.Deva Kumar

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

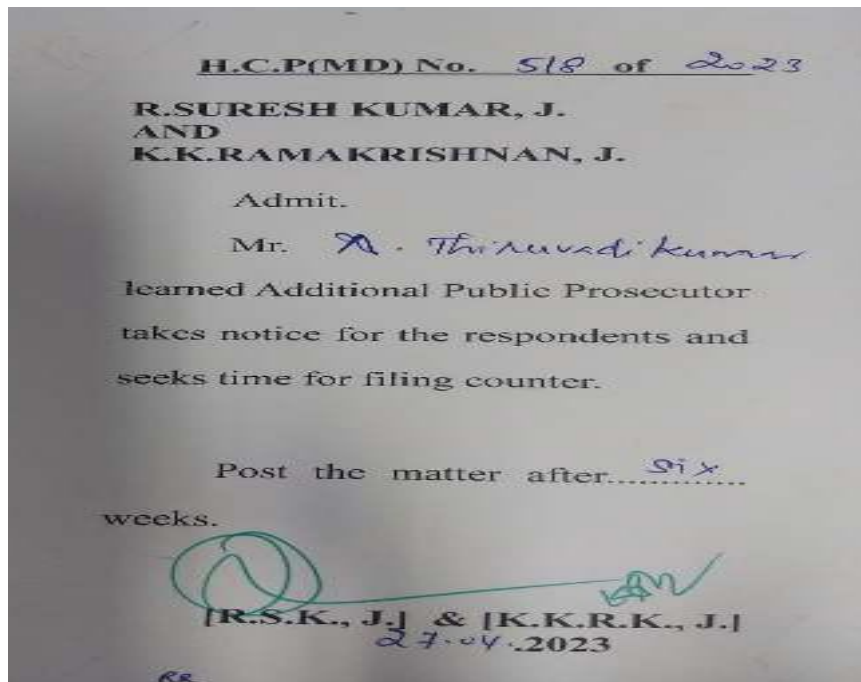
Captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity) was listed in the Admission Board before Hon'ble Division Bench on 27.04.2023 and the following order was made:



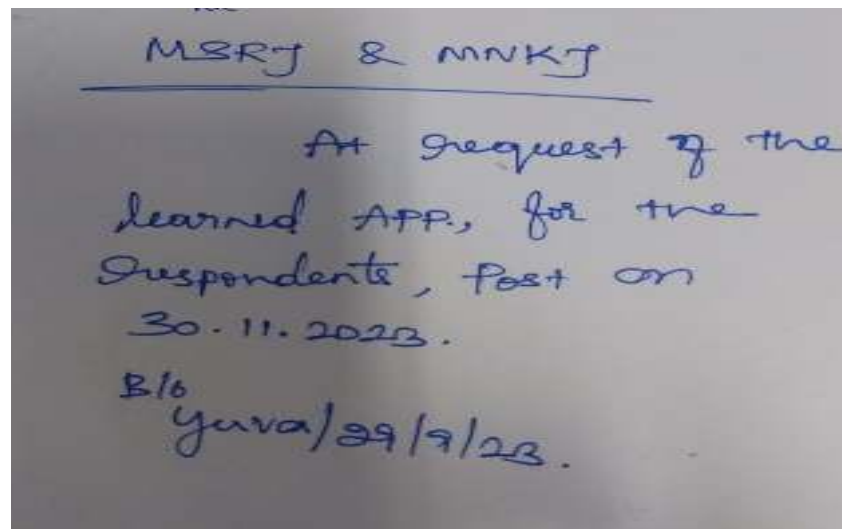
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2. Thereafter, there was one listing on 29.09.2023 before another Hon'ble Predecessor co-ordinate Bench and the following proceedings were made:





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

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

5. Mr.V.Deva Kumar, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

6. Captioned HCP has been filed by wife of the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference Cr.M.P.No. 3/S.O./2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

7. 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



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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.

8. There is no adverse case. The ground case which constitutes the sole substratum of the impugned preventive detention order is Crime No.80 of 2022 on the file of Nachiyapuram Police Station, Sivagangai District registered under Sections 5(m), 5(n) r/w 6, 17 and 3(a) r/w 4 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' 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.

9. 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 22.11.2022 but the impugned preventive detention



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order has been made only on 29.03.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

10. Mr.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.

11. 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



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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.

12. 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.

13. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.80 of 2022 on the file of Nachiyapuram Police Station registered under Sections 5(m), 5(n) r/w 6, 17 and 3(a) r/w 4 of POCSO Act and therefore this solitary case is the sole



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substratum of the impugned preventive detention order. This solitary case is now Spl.S.C.No.16/2023 on the file of POCSO Court, Sivagangai. Learned Additional Public Prosecutor submits that charge sheet has been filed within the prescribed time on 11.01.2023. This means that the detenu is not entitled to default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity]. This also means that detenu if so advised and if he so desires should file a regular bail application under Section 439 of Cr.PC. If the detenu files a regular bail application under Section 439 Cr.PC before the trial Court, learned trial Judge shall consider the bail application on its own merits and in accordance with law untrammelled / uninfluenced by this order, as this order has been made for the limited purpose of testing the impugned preventive detention order in the habeas legal drill on hand. To put it differently, ie., for adding clarity and specificity, we make it clear that the impugned preventive detention order being set aside cannot by itself become a ground for grant of bail. This further means that learned trial Judge should consider the bail application ignoring / de hors the position that impugned preventive detention order has been set aside vide this order. To add greater clarity, we make it clear that this order cannot be produced in



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the trial Court in support of the bail application. In any event, the learned trial Court Judge shall consider the bail application in accordance with normal parameters at his discretion taking into account the proviso of POCSO Act. In the light of the submissions made by learned Additional Public Prosecutor we deem it appropriate to say that this principle is not restricted to captioned HCP and the instant order ie., this principle that 'a bail application in a trial Court should be considered on its own merits and in accordance with law de hors an order in a HCP setting aside the preventive detention order qua bail applicant' is a generic principle which will apply across the board ie., to all cases. To put it differently an order in a HCP setting aside a preventive detention order will neither be an impetus nor impede a bail plea.

14. Before concluding, we also remind ourselves that preventive detention is not a punishment and Habeas Corpus a writ predicated on a high prerogative right.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference Cr.M.P.No.



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3/S.O./2023 made by the second respondent is set aside and the detenu Thiru.Ramakrishnan, male, aged 48 years, son of Ramalingam, 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.]
30.11.2023

vsm
Index : Yes
Neutral Citation : Yes

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



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To

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of Tamil Nadu,
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- 2.The District Collector cum District Magistrate,
Sivagangai, Sivagangai District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Nachiyarpuram Police Station,
Sivagangai District.
- 5.Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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