



H.C.P(MD)No.546 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.546 of 2023

S.Premkumar

.. Petitioner

VS

1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order passed in P.D.No.20 of 2023 dated 05.04.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Ramsitharthan, aged about 26 years,



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S/o.Premkumar, now detained at the Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
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] has been filed in this Court on 02.05.2023 by the father of the detenu assailing a 'preventive detention order dated 05.04.2023 bearing reference P.D.No.20 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience'] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Aralvoimozhy Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].



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2.Captioned HCP has been admitted by Hon'ble Co-ordinate Division Bench in the Admission Board on 04.05.2023.

3.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.

4.There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.54 of 2023 on the file of Aralvoimozhy Police Station for alleged offences under Sections 341 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into sections 147, 148, 341, 294(b) and 302 of IPC. Considering to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.



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

6.In the support affidavit qua captioned HCP very many points have been raised but Mr.N.Pragalathan, learned counsel for HCP petitioner (to be noted detenu is the son of HCP petitioner) in the final hearing today raised a point that 'live and proximate link' between grounds of detention and purpose of detention has snapped. Elaborating his argument in this direction, learned counsel submitted that even according to grounds of detention and the impugned preventive detention order, the date of arrest in the ground case is 17.02.2023 and the impugned preventive detention order has been made on 05.04.2023. It was pointed out that the ground case is a solitary case which constituted the sole substratum of the impugned preventive detention order. As a legal principle, a recent Judgment of Hon'ble Supreme Court (*Sushanta Kumar Banik Vs. State of Tripura & others* reported in 2022 *Livelaw (SC) 813 : 2022 SCC Online SC 1333*) was pressed into service.



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7.Learned Additional Public Prosecutor submitted that materials had to be collected and time was consumed in this exercise.

8.We have carefully considered the rival submissions.

9.We find that collection and collation of records cannot be the convincing explanation qua live and proximate link between grounds of detention and purpose of detention getting snapped.

10.**Banik** principle has been respectfully followed by this Court and one such order is order dated 20.06.2023 made in H.C.P.No.72 of 2023 which was pressed into service by learned counsel for HCP petitioner. The scanned reproduction of the same is as follows:-



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL.

H.C.P.NO.72 OF 2023

Jothi

Petitioner

Vs.

1.State of Tamil Nadu
Rep. By the Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009

2.The Commissioner of Police
The Greater Chennai City
Vepery, Chennai - 600 007.

3.The Superintendent of Prison
Central Prison
Puzhal, Chennai - 600 056.

4.The Inspector of Police
P-1, Pulimothup Police Station,
Chennai.

Respondents

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MC.No.74/2023

PRAYER: 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, to call for the records relating to the detention order in Memo. No.435/BCDFG/SSV/2022 dated 21.11.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1983 and set aside the same and direct the respondents to produce the petitioner's brother LAKSHMANAN S/O. PANDIYAN aged about 32 years the detainee now confined in Central Prison, Puzhal, Chennai before the Court and set petitioner's brother LAKSHMANAN S/O. PANDIYAN aged about 32 years the detainee herein at liberty.

For Petitioner

Mr S.Sundar J.

For Respondents :

for Mr C.Johnson Samuel

Mr.E.Raj Rishi

Additional Public Prosecutor

ORDER

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

When the matter came up for admission on 19.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:

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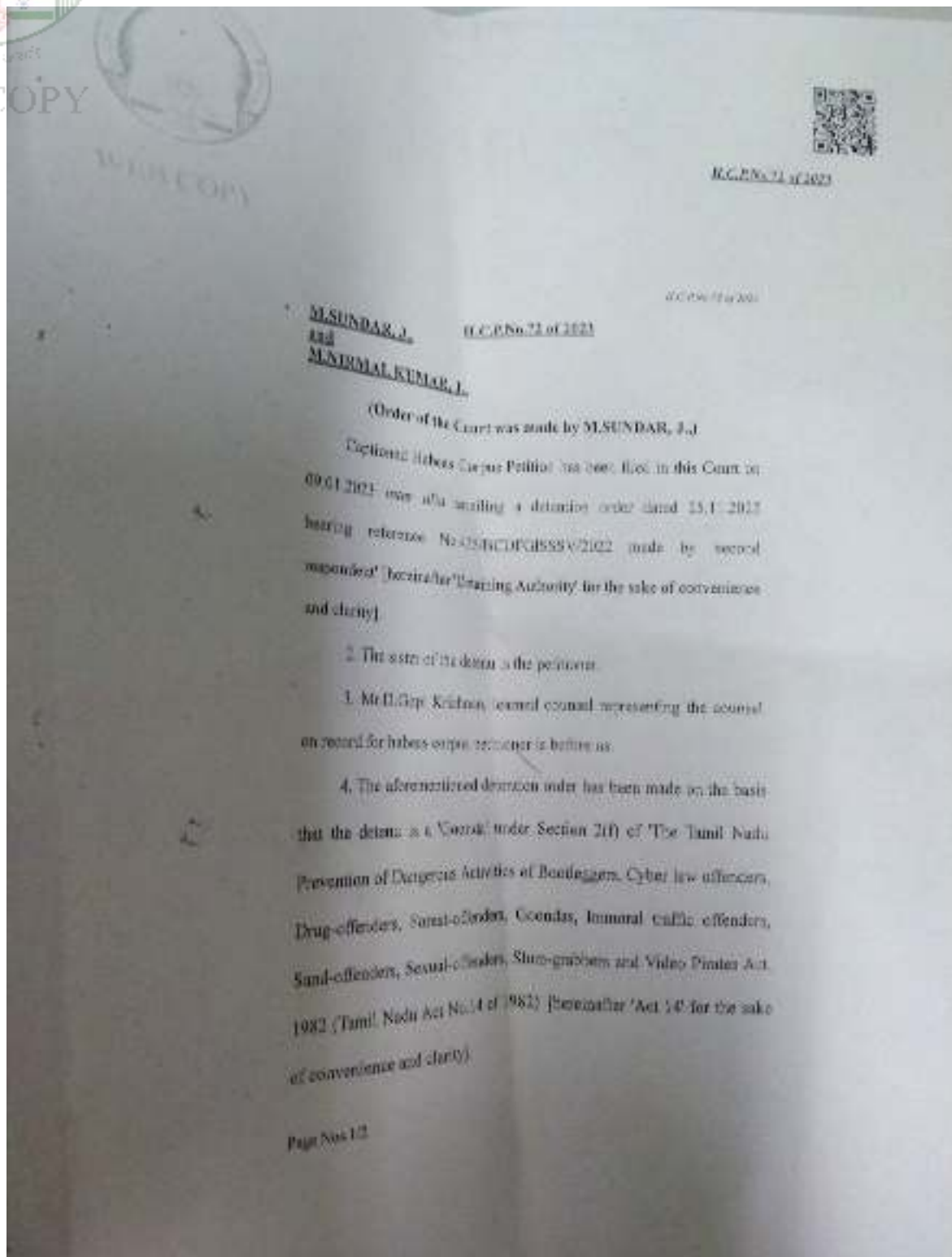
<https://www.mhc.tn.gov.in/judis>



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H.C.P.No.72 of 2023

H.C.P.No.72 of 2023

M.SUNDAR J.

DD

M. SUBMAL KUMAR J.

MA

3. The detention order has been assailed over and on the ground that the detenu has not filed any bail application qua ground one but the detention order proceeds on the basis that there is imminent possibility of being released on bail.

4. *Prima facie* case made out for issue of notice.

5. Admn. Issue notice returnable in five weeks.

6. Mr.R.Murthyaparthi, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents for the captioned Habeas Corpus Petition accordingly.

(M.S.J.)

(M.N.K.J.)

19.01.2023

mk

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2. There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No. 6 of 2022 on the file of P-1 Pulianthope Police Station, initially registered for alleged offences under Sections 147, 148, 324, 302 and 506(i) of The Indian Penal Code (45 of 1860) [hereinafter IPC] for the sake of convenience and clarity) and after investigation, altered into Sections 147, 148, 324, 302 and 506(i) of IPC. 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.

3. Mr. S. Senthilvel, learned counsel representing the learned counsel on record for petitioner and Mr. E. R. Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. Though in the admission hearing, the point that the detainee has not filed any bail application and ground case for the detention order proceeds on the basis that there is imminent possibility of being enlarged on bail was raised, in the hearing today, learned counsel for petitioner submits that 'live and proximate link' between the grounds of detention and purpose

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of detention has snapped as date of arrest in the ground case is 21.10.2022

but the impugned detention order has been made only on 23.11.2022.

5.Mr.L.Raj, Shik, learned State Additional Public Prosecutor, submits to the contrary by saying that reports 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 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

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H.C.P.No.71 of 2023

Basis. Hon'ble Supreme Court has held in *Bank* case law that this point has two facets. One facet is 'or reasonable 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, *Bank* 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. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

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9 days, the applicant is, captioned H.P. is allowed. Impugned
W.H.C. detention order dated 23.11.2022 bearing reference Memo
No.435/BCD/CISSSV/2022 made by the second respondent is set aside and
the detenue Thiru LAKSHMANAN, aged 32 years, son of Thiru. ANNADIYAN,
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.)

20.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
TK

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

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To

D.C.P.No.71 of 2023

1. The Additional Chief Secretary to Government
Home, Probation and Prison Department;
Fort St. George,
Chennai - 600 005.
2. The Commissioner of Police
The Greater Chennai City
Vepery,
Chennai - 600 067.
3. The Superintendent of Prison
Central Prison
Puduchal,
Chennai - 600 066.
4. The Inspector of Police
P-1, Pulimthope Police Station,
Chennai.
5. The Public Prosecutor
High Court of Madras.

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MSUNDAR J.
AND
RSAKTHI L.J.

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20.06.2023

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11.We find that the case on hand is one where the substratum of the impugned preventive detention order is constituted by a solitary case and therefore we sustain the submission of the HCP petitioner.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.04.2023 bearing reference P.D.No.20 of 2023 made by the second respondent is set aside and the detenu Thiru.Ramsitharthan, aged 26 years, son of Thiru.Premkumar, 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.)
03.10.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

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



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To

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

ps

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03.10.2023