



HCP(MD)No.596 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.596 of 2023

K.Sutha

: Petitioner

Vs.

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

2.The Commissioner of Police,
Madurai City,
Madurai.

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



HCP(MD)No.596 of 2023

4.The Superintendent of Prison,
District Jail,
Virudhunagar.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.22/BCDFGISSSV/2023 dated 10.04.2023 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 husband ie., Kannan, aged about 45 years, S/o.Rajangam, now detained at the District Jail, Virudhunagar, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 10.04.2023 bearing reference No.22/BCDFGISSSV/2023'



HCP(MD)No.596 of 2023

[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 V1 Thirupparankundram 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.

2.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.

3.There is no adverse case. The impugned preventive detention order has been passed based on a solitary case in Crime No.87 of 2023 on the file of V1 Thirupparankundram Police Station for the alleged offence under Section 302 of 'The Indian Penal Code (45 of



HCP(MD)No.596 of 2023

1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and was subsequently altered into one under Sections 120(B), 147 and 302 IPC. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4.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.

5.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 06.02.2023 but the impugned preventive detention order has been made only on 10.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6.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



HCP(MD)No.596 of 2023

facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

7.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.

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



HCP(MD)No.596 of 2023

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.

9.To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.87 of 2023 on the file of V1 Thirupparankundram Police Station for alleged offence under Section 302 of IPC which was subsequently altered into Sections 120(B), 147 and 302 of IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order.

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

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 10.04.2023 bearing reference



HCP(MD)No.596 of 2023

No.22/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Kannan, male, aged 45 years, son of Thiru.Rajangam, 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.]
04.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Virudhunagar.



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HCP(MD)No.596 of 2023

To

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Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent of Prison,
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4.The Superintendent of Prison,
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.596 of 2023

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

MR

ORDER MADE IN
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