



H.C.P(MD)No.633 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**

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Arockia Jose Milton alias Jose

.. Petitioner

VS

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner,
Trichy.

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

.. 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 of the respondent No.2 in C.No. 20/Detention/C.P.O/T.C/2023 dated 05.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Arockia Jose Milton alias Jose, son of Antony, aged about 25 years, now detained as “Goonda” at Trichy Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 05.04.2023 bearing reference C.No.20/Detention/C.P.O/T.C/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Gandhi Market Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

2. 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



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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. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.143 of 2023 on the file of Gandhi Market Police Station for alleged offences under Sections 294(b), 323, 324 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into sections 294(b), 323, 324, 506(ii) and 307 of IPC and again altered into Sections 294(b), 323, 324, 506(ii) and 302 of 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.R.Alagumani, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention



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has snapped as date of remand in the ground case is 18.02.2023 but the impugned preventive detention order has been made only on 05.04.2023.

6. 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.

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



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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 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 sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.143 of 2023 on the file of Gandhi Market Police Station for alleged offences under Sections 294(b), 323, 324 and 506(ii) of IPC and subsequently altered into sections 294(b), 323, 324, 506(ii) and 307 of IPC and again altered into Sections 294(b), 323, 324, 506(ii) and 302 of IPC.



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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.04.2023 bearing reference C.No.20/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Arockia Jose Milton alias Jose, aged 25 years, son of Antony, 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, Tiruchirappalli.



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- To
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 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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