



H.C.P(MD)No.646 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.10.2023

Coram

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

H.C.P(MD)No.646 of 2023

S.Gomadhi

.. Petitioner

vs

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

2.The District Magistrate and District Collector,
Dindigul Collector Office,
Dindigul District.

3.The Superintendent,
Central Prison,
Madurai.

.. 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 in detention passed in Detention Order No.30 of 2023, dated 05.05.2023 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Sakthivel, son of Sivamurugan, male, aged 28 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.



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For Petitioner : Mr.J.Lawrance
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the mother of the detenu assailing a 'preventive detention order dated 05.05.2023 bearing Detention Order No.30 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 Pattiveeranpatti 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 preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders,



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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 'Drug Offender' within the meaning of Section 2(e) 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.03 of 2023 on the file of Pattiveeranpatti Police Station for alleged offences under Section 8(c) read with 20(b)(ii)(C), 29(1) and 25 of 'Narcotic Drugs and Psychotropic Substances, Act, 1985' [hereinafter 'NDPS 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.

4. Mr.J.Lawrance, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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5. Learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 04.01.2023 but the impugned preventive detention order has been made only on 05.05.2023.

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,



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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 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.



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9. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.03 of 2023 on the file of Pattiveeranpatti Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(C), 29(1) and 25 of NDPS Act.

10. In the case on hand, the impugned preventive detention order is predicated on a solitary case. To put it differently, the sole substratum of the impugned preventive detention order is a solitary case i.e., C.C.No.659 of 2023 on the file of Essential Commodities, NDPS Court, Madurai. Learned Prosecutor submits on instructions that in the trial Court final report has since been filed within the prescribed time line. This Court is also informed that the detenu has not been granted bail in the trial Court. If the detenu moves the trial Court for bail, we make it clear that trial Court shall consider the bail application on its own merits and in accordance with law untrammelled by this HCP order. We further make it clear that in accordance with law will include all the provisions under NDPS Act, which deal with bail and more particularly Section 37 thereat.



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11. 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 05.05.2023 bearing Detention Order No.30 of 2023 made by the second respondent is set aside and the detenu Thiru.Sakthivel, aged 28 years, son of Thiru.Sivamurugan, 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.)
16.10.2023

Index : Yes/No
Neutral Citation : Yes/No
ps

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



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- To
- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
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 - 2.The District Magistrate and District Collector,
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Dindigul District.
 - 3.The Superintendent,
Central Prison,
Madurai.
 - 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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