



H.C.P(MD)No.647 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.647 of 2023

Gunasundari

.. Petitioner

VS

1.State of Tamil Nadu,
Rep. By it's the Additional
Chief Secretary to Government,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Pudukottai District,
Pudukottai.

3.The Superintendent,
Central Prison, Thiruchirapalli.

: Respondents

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 proceedings of the 2nd respondent made in his proceedings in P.D.O.No. 09/2023, dated 17.04.2023 and quash the same and set petitioner's husband by name “Vadivel, S/o.Mangalan @ Aangan, aged about 39 years at liberty from Central Prison, Thiruchirapalli”.



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H.C.P(MD)No.647 of 2023

For Petitioner : Mr.T.Sugadev

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 wife of the detenu assailing a 'preventive detention order dated 17.04.2023 bearing reference P.D.O.No.09/2023' [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 'Keeranur All Women Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

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



H.C.P(MD)No.647 of 2023

(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.

3. There is no adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.01 of 2023 on the file of Keeranur All Women Police Station for alleged offences under Sections 5(l) 5(j)(ii) r/w 6(1) of Protection of Children from Sexual Offences Amendment Act, 2019 and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into sections 5(n), 5(a)(iv), 5(i), 5(j)(ii) r/w 6(1) of Protection of Children from Sexual Offences Amendment Act, 2019 and 506(i) 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.T.Sugadev, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P(MD)No.647 of 2023

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 remand in the ground case is 01.02.2023 but the impugned preventive detention order has been made only on 17.04.2023.

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.



H.C.P(MD)No.647 of 2023

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.

9. To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.01 of 2023 on the file of Keeranur All Women Police Station for alleged offences under Sections 5(l) 5(j)(ii) r/w 6(1) of Protection of Children from Sexual Offences Amendment



H.C.P(MD)No.647 of 2023

Act, 2019 and 506(i) of IPC and subsequently altered into sections 5(n), 5(a) (iv), 5(i), 5(j)(ii) r/w 6(1) of Protection of Children from Sexual Offences Amendment Act, 2019 and 506(i) IPC.

10. This Bench is informed that in the solitary case, which forms the sole substratum of the impugned preventive detention order, final report has been filed within the prescribed time line. As a sequitur, we are informed that the detenu will have to seek regular bail in solitary case ie., ground case. We are also informed that detenu has been enlarged on bail in solitary ground case. In this scenario, we make it clear that if detenu applies for regular bail in the trial Court, learned trial Judge shall consider the same on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.

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 17.04.2023 bearing reference P.D.O.No.09/2023 made by the second respondent is set aside and the detenu



H.C.P(MD)No.647 of 2023

Thiru.Vadivel aged 39 years, son of Thiru.Mangalan @ Aangan, 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.

Index : Yes
Neutral Citation : Yes
vsm

(M.S.,J.) (R.S.V.,J.)
16.10.2023

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

To

- 1.The Additional Chief Secretary to Government,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Pudukottai District,
Pudukottai.
- 3.The Superintendent,
Central Prison, Thiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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H.C.P(MD)No.647 of 2023

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and
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