



H.C.P(MD)No.704 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.704 of 2023

Senthil

.. Petitioner

vs

1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 9.

2.The Commissioner of Police,
Madurai City.

3.The Superintendent,
Central Prison,
Madurai.

4.The Inspector of Police,
Karimedu Police Station,
Madurai District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent in Detention Order No.41/BCDFGISSSV/2023, dated 10.05.2023 and to



H.C.P(MD)No.704 of 2023

quash the same and direct the respondents to produce the body or person of the detenu, Manikandan @ Singam, son of Senthil, aged about 20 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.M.Karunanithi
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 father of the detenu assailing a 'preventive detention order dated 10.05.2023 bearing Detention Order No.41/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the 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



H.C.P(MD)No.704 of 2023

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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.189 of 2023 on the file of C5 Karimedu Police Station for alleged offences under Sections 147, 149, 294(b), 323, 324, 307 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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.M.Karunanithi, 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.704 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 arrest in the ground case is 17.02.2023 but the impugned preventive detention order has been made only on 10.05.2023.

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,



H.C.P(MD)No.704 of 2023

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.



H.C.P(MD)No.704 of 2023

9. To be noted, the adverse case is in Crime No.101 of 2021

on the file of C5 Karimedu Police Station (occurrence was on 20.01.2021) and therefore time consumed remains unexplained.

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 10.05.2023 bearing Detention Order No.41/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Singam, aged 20 years, son of Thiru.Senthil, 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.



H.C.P(MD)No.704 of 2023

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 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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H.C.P(MD)No.704 of 2023

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