



HCP(MD)No.775 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.775 of 2023

Poopandi

... Petitioner

vs.

1. The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.

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

3. The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.

4. The Superintendent of Prison,
Central Prison,
Madurai,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the entire records in relating to the impugned detention order in Cr.M.P.No.4/Goonda/2023 dated 05.05.2023 passed by the 2nd respondent and to set aside the same and consequently to direct the respondents to produce the detenu



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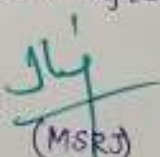
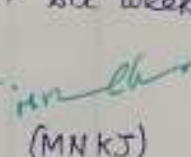
Balamurugan [aged 21 years] S/o. Rasu, who has been termed as "Goonda" and who is now detained in the Central Prison, Madurai, before this Court and to set the detenu at his liberty.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 04.07.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:

Sl.No.	Date	Main Case / Misc. Case No.	Office Notes, Reports, Orders or Proceedings with Signatures
D	04/07/2023	HCP(MD)No. 775/2023	MSRJ & MNKJ Admit. Mr. A. Thiruvadikumar, learned Additional Public Prosecutor, takes notice for the respondents. Post the matter after six weeks.  (MSRJ)  (MNKJ) 04.07.2023



2. It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.

3. Today, the captioned matter is in the Final Hearing Board.

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

5. Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 05.05.2023 bearing reference Cr.M.P.No.4/Goonda/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, 3rd respondent is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and 2nd respondent is the detaining authority as impugned preventive detention order has been made by 2nd respondent.

6. 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.

7. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.57 of 2023 on the file of Sivagangai Taluk Police Station, for alleged offence under Section 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 28.03.2023 but the impugned preventive detention order has been made only on 05.05.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise.

10. 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.

11. To be noted, ***Banik*** case has been respectfully followed by this Court in ***Gomathi Vs.The Principal Secretary to Government and***



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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.

12. To be noted, the first adverse case is in Crime No.40 of 2023 on the file of Poovanthi Police Station for alleged offences under Sections 341, 394 of IPC [alleged occurrence on 26.03.2023], second adverse case is Crime No.40 of 2023 on the file of Madagupatti Police Station for alleged offence under Section 394 of IPC [alleged occurrence on 26.03.2023], ground case is Crime No.57 of 2023 on the file of Sivagangai Taluk Police Station, for alleged offence under Section 394 of IPC [alleged occurrence on 26.03.2023] and therefore time consumed remains unexplained.

13. There is one ground case and two adverse cases. As regards two adverse cases, the common date of occurrence is 26.03.2023. The



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detenu was arrested in the ground case on 28.03.2023. Thereafter, when the detenu remain incarcerated having been arrested in the ground case, there was a formal arrest in the second adverse case on 30.03.2023 and on 01.04.2023 in the first adverse case.

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

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.05.2023 bearing reference in Cr.M.P.No.4/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Balamurugan aged about 21 years, son of Thiru.Rasu, 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.)
06.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Ramanathapuram.



WEB COPY



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

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To

1. The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.
2. The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
3. The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.
4. The Superintendent of Prison,
Central Prison,
Madurai,
Madurai District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.

ORDER MADE IN
HCP(MD)No.775 of 2023
DATED : 06.11.2023