



H.C.P(MD)No.811 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2023

Coram

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

H.C.P(MD)No.811 of 2023

M.Jeyalakshmi .. Petitioner/wife of the detenu

VS

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

2.The District Collector cum District Magistrate,
Madurai,
Madurai District.

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

4.The Inspector of Police,
Melur Circle,
Madurai District.

.. Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records pertaining to the detention order in Detention Order No.B.C.D.F.G.I.S.S.S.V.No.14/2023, dated 27.04.2023 under sub-Sections (1) & (2) of Section 3 of the Tamil Nadu Act 14 of 1982 passed by the second respondent and set aside the same by setting the detenu by name Malaichamy, S/o.Kadamban, aged about 46 years and set him at liberty now detained at Central Prison, Madurai.

For Petitioner : Mr.R.Vignesh

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

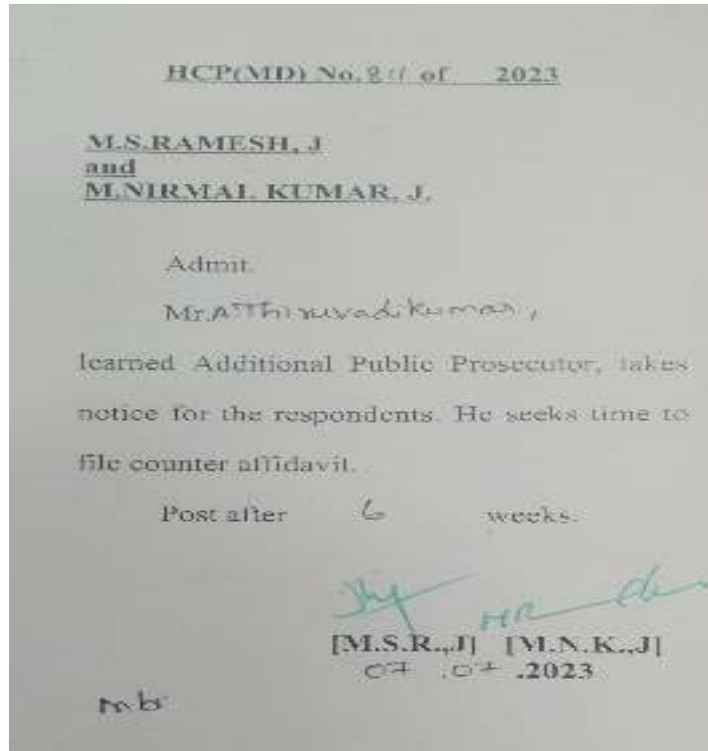
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 07.07.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



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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, captioned matter is in the Final Hearing Board.

4.Mr.R.Vignesh, learned counsel for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.202 of 2022 on the file of Melavalavu Police Station for alleged offences under Sections 147, 148, 341, 302 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 147, 148, 341, 302, 506(ii), 294(b), 355, 120-B and 212 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.

8.In the support affidavit qua captioned HCP several grounds have been raised but learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that the detenu was surrendered on 23.02.2023 but the impugned preventive detention order has been made only on 27.04.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.

9.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.

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.



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11.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.

12.To be noted, the adverse case is in Crime No.39 of 2020 on the file of Melavalavu Police Station (occurrence was on 24.02.2020) and therefore time consumed remains unexplained.

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



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14.Ergo, the sequitur is, captioned HCP is allowed.

Impugned preventive detention order dated 27.04.2023 bearing reference No.B.C.D.F.G.I.S.S.S.V.No.14/2023 made by the second respondent is set aside and the detenu Thiru.Malaichamy, aged 46 years, son of Thiru.Kadamban, 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.)
27.11.2023

Index : Yes/No

Neutral Citation : Yes/No

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Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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- 2.The District Collector cum District Magistrate,
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Madurai District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Melur Circle,
Madurai District.
- 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 6.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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