



HCP(MD)No.822 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

CORAM :

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

HCP(MD)No.822 of 2023

Mrs.Ramalakshmi

... Petitioner

vs.

1. The State rep. by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

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

4. The Inspector of Police,
Ambasamuduram Police Station,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, by calling for the records relating to the impugned order of Detention made in M.H.S.Confdl No. 62/2023 dated 14.06.2023 on the file of the District Collector and District Magistrate, Tirunelveli District, the 2nd respondent herein, branding the detenu by name Esakkiappan @ Rasu @ Muttaiakose S/o. Subbaiah, aged about 41 years as 'Goonda' who is now confined in



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Central Prison, Madurai and quash the impugned order of detention and set the detenu at liberty by producing him before this Court.

For Petitioner : Mr.T.J.Ebenezer Charles
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 convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 14.06.2023 bearing reference M.H.S.Confdl No.62/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority is the 4th respondent [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 10.07.2023 and a coordinate Hon'ble predecessor Bench made the following order and a scanned reproduction of the same is as follows:



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M.S.RAMESH, J
and
M.NIRMAL KUMAR, J.

Admit.

Mr. *A. Thiruvadi Kumar,*

learned Additional Public Prosecutor, takes
notice for the respondents. He seeks time to
file counter affidavit.

Post after *six* weeks.

[Signature]
[M.S.R.,J] [M.N.K.,J]

10.02.2023

TSu/CH

3. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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.

4. There is no adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.104 of 2023 on the file of Ambasamudram Police Station, for alleged offences under Sections 294(b), 302, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 ['TNPHW' 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.

5. Mr.T.J.Ebenezer Charles, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



6. 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 15.05.2023 but the impugned preventive detention order has been made only on 14.06.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

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

8. 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



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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.

9. 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.

10. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.104 of 2023 on the file of Ambasamudram Police Station, for alleged offences under Sections 294(b), 302, 506(ii) of IPC and Section 4 of TNPHW [alleged occurrence



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on 14.05.2023] and therefore this solitary case is the sole substratum of the impugned preventive detention order.

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 14.06.2023 bearing reference M.H.S.Confdl No.62/2023 made by the second respondent is set aside and the detenu Thiru.Esakkiappan @ Rasu @ Muttaiakose son of Thiru.Subbaiah, aged 41 years, 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
bala

(M.S., J.) (R.S.V., J.)
18.10.2023

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



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

bala

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

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

4. The Inspector of Police,
Ambasamuduram Police Station,
Tirunelveli District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
HCP(MD)No.822 of 2023
DATED : 18.10.2023