



HCP(MD)No.807 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM :

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

HCP(MD)No.807 of 2023

Edwin

... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3. The Superintendent of Prison,
Central Prison, Palaymakottai
Tirunelveli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.23/2023 dated 21.04.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Edwin, aged about 28 years, son of Stanley, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan
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 detenu assailing the 'preventive detention order dated 21.04.2023 bearing reference P.D.No.23 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Thiruvattar Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and the second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 07.07.2023 and Hon'ble predecessor Bench made the following order:

'H.C.P.No.807 of 2023

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



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Admit.

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

Post after 6 weeks.'

3. 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.

4. There is no adverse case. This solitary case which is the sole substratum of impugned preventive detention order is ground case qua the detenu for alleged offence under Sections 294(b), 324 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered as Sections 294(b), 324, 307 and 302 IPC in Crime No.46 of 2023 on the file of Thiruvattar Police Station.



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5. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, for all the 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 14.02.2023 but the impugned preventive detention order has been made only on 21.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

7. 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.

8. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.



9. 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.

10. 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



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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.

11. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.46 of 2023 on the file of Thiruvattar Police Station for alleged offence under Sections 294(b), 324 and 307 of the 'Indian Penal Code, 1860 '(Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] altered as Sections 294(b), 324, 307 and 302 IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order .

12. As regards the aforementioned solitary ground case, though obvious owing to the facts and circumstances of the case on hand we deem it appropriate to make it clear that in the trial Court when the detenu/accused moves for bail, the same would be considered 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 a habeas legal drill.



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

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.04.2023 bearing reference P.D.No. 23/2023 made by the detaining authority is set aside and the detenu Thiru.Edwin, aged about 28 years, son of Thiru.Stanley, 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.)
12.10.2023

Index : Yes
Neutral Citation : Yes
bala

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

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.



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

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3. The Superintendent of Prison,
Central Prison, Palaymakottai
Tirunelveli.

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

ORDER MADE IN
HCP(MD)No.807 of 2023
DATED : 12.10.2023