



H.C.P(MD)No.817 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2023

Coram

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

**H.C.P(MD)No.817 of 2023**

Radha

.. Petitioner

VS

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

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

3.The Superintendent of Prison,  
Trichy Central Prison,  
Trichy 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 entire records connected with the detention order of the respondent No.2 in Cr.M.P.No.09 of 2023 dated 20.05.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Kamal, son of Rukman, aged about 41 years, now detained in Trichy Central Prison before this Court and set him at liberty forthwith.



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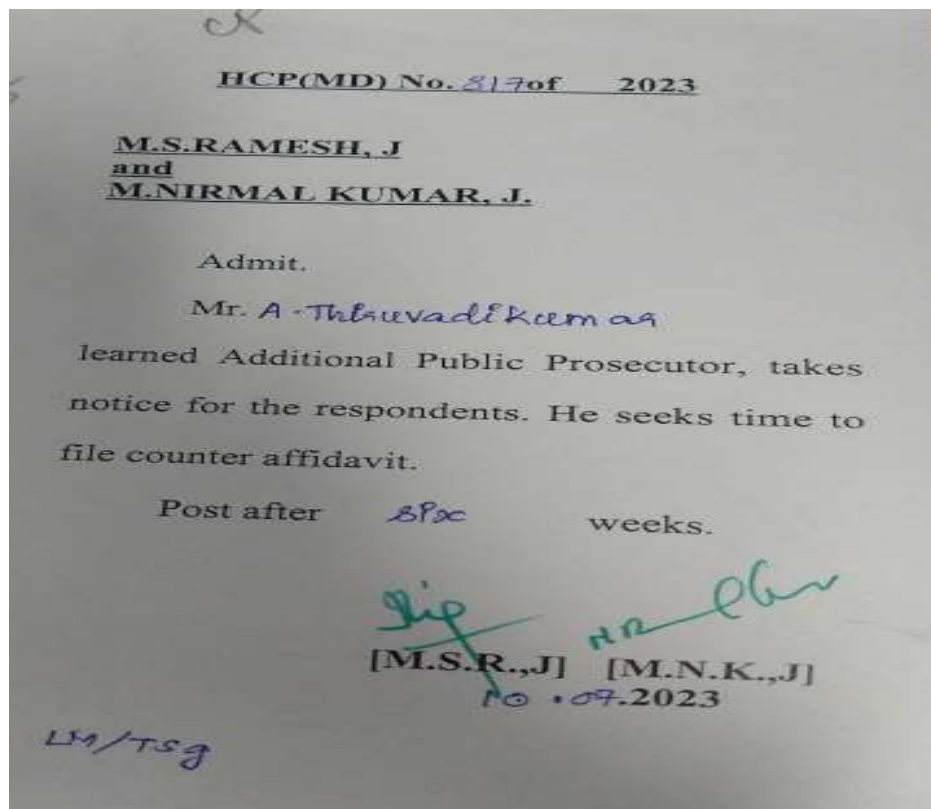
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.R.Meenakshi Sundaram  
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 10.07.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





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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, the captioned matter is in the Final Hearing Board.

4. Mr.R.Alagumani, learned counsel on record for petitioner and Mr.R.Meenakshisundaram, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the grandmother of the detenu assailing a 'preventive detention order dated 20.05.2023 bearing reference Cr.M.P.No.09/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Ramjinagar Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

6. Impugned preventive 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

7. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.40 of 2023 on the file of Ramjinagar Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(C) and 25 of 'Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No.61 of 1985)' [hereinafter 'NDPS Act' 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.

8. Learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 05.03.2023 but the impugned preventive detention order has been made only on 20.05.2023.

9. Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be



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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.

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



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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, out of the four adverse cases, the first adverse case is in Crime No.173 of 2022 on the file of Ramjinagar Police Station (occurrence was on 05.08.2022), second adverse case is in Crime No.184 of 2022 on the file of Ramjinagar Police Station (occurrence was on 09.09.2022), third adverse case is in Crime No.237 of 2022 on the file of Ramjinagar Police Station (occurrence was on 19.10.2022) and fourth adverse case is in Crime No.279 of 2022 on the file of Ramjinagar Police Station (occurrence was on 22.12.2022) and therefore time consumed remains unexplained.

**13.** This Bench is informed by the learned Additional Public Prosecutor that in the ground case final report has been filed within the



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prescribed time line and the same is now on the file of Special Court Pudukkottai in C.C.No.259 of 2023. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail application on its own merits and in accordance with law [more particularly under Section 37 of NDPS Act] untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.

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 20.05.2023 bearing reference Cr.M.P.No.09/2023 made by the second respondent is set aside and the detenu Thiru.Kamal, aged 41 years, son of Rukman, 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.)  
30.10.2023

vsm

Index : Yes

Neutral Citation : Yes

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



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

vsm

To

- 1.The Principal Secretary to Government,  
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- 2.The District Collector and District Magistrate,  
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Trichy Central Prison,  
Trichy District.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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