



HCP(MD)No.857 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM :

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

HCP(MD)No.857 of 2023

R.Selvam

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The District Collector and District Magistrate,
Theni Collector Office,
Theni District.

3. The Superintendent,
Female Central Prison,
Madurai.

... 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 in Order No.33/2023 dated 11.05.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's wife namely, S.Saraswathi, w/o. R.Selvam female aged 57 years, who is detained in Female Central Prison, Madurai, before the Court and set her at liberty forthwith.



HCP(MD)No.857 of 2023

For Petitioner : Mr.G.Karuppasamy Pandian for
Mr.Na.Manimaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

WEB COPY

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 husband of the detinue assailing the 'preventive detention order dated 11.05.2023 bearing reference Detention Order No.33/2023' [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 Prohibition Enforcement Wing, Theni, is the sponsoring authority [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 13.07.2023 and a coordinate Hon'ble predecessor Bench made the following order and a scanned reproduction of the same is as follows:



WEB COPY



HCP(MD)No.857 of 2023

8

HCP(MD) No. ⁸⁵⁷ of 2023

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

Admit.

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

Post after six weeks.

[M.S.R.,J] [M.N.K.,J]
13.7.2023

Rv

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 detinue is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

4. 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.202 of 2023 on the file of Prohibition Enforcement Wing, Theni, for alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985, [hereinafter 'NDPS Act' for the sake of brevity and convenience] subsequently altered as Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act. 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.G.Karuppasamy Pandian, learned counsel representing Mr.Na.Manimaran, 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 detainee was arrested on 07.03.2023 but the impugned preventive detention order has been made only on 11.05.2023 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 in the ground case, final report has been filed within the prescribed time and it has been taken on file in Special S.C.No.962 of 2023 on the file of NDPS Court, Madurai. He further 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



HCP(MD)No.857 of 2023

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.

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 first adverse case is in Crime No.644 of 2017 on the file of Palanichettipatti Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act [alleged occurrence on 18.09.2017], second adverse case is Crime No.17 of 2019 on the file of Palanichettipatti Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act [alleged occurrence on 12.01.2019], ground case is Crime No.202 of 2023 for alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 25, 29(1) of NDPS Act [alleged occurrence on 07.03.2023] and subsequently altered as Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act and therefore time consumed remains unexplained.

11. This Bench is also informed that in the ground case, the detenue has not been granted bail by the Trial Court. If the detenue moves for regular bail in the Trial Court, we make it clear that the Trial Court shall consider the bail petition on its own merits and in accordance with law [more particularly, NDPS Act and Section 37 thereat] untrammelled by this order which has been made in a habeas legal drill for the limited purpose of testing the impugned preventive detention order.



HCP(MD)No.857 of 2023

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

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.05.2023 bearing reference Detention Order No.33/2023 made by the second respondent is set aside and the detinue Tmt.S.Saraswathi, aged about 57 years, wife of Thiru.R.Selvam, 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.)
16.10.2023

Index : Yes
Neutral Citation : Yes
bala

P.S: Registry to forthwith communicate this order to Jail authorities in Sub Jail for Women, Nilakkottai in connection with the Prohibition Enforcement Wing.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The District Collector and District Magistrate,
Theni Collector Office,
Theni District.



HCP(MD)No.857 of 2023

3. The Superintendent,
Female Central Prison,
Madurai.

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



WEB COPY



HCP(MD)No.857 of 2023

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

bala

ORDER MADE IN
HCP(MD)No.857 of 2023
DATED : 16.10.2023