



HCP(MD)No.849 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.849 of 2023

Pavun Rekha

: Petitioner

Vs.

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

2.The Commissioner of Police,
Madurai City,
Madurai.

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

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the order made in 24/BCDFGISSSV/2023 dated 12.04.2023 on the file of the second respondent and quash the same and consequently direct the respondents to produce the petitioner's son namely "Tamil @ Tamilarasan, S/o.Selvam, aged about 21 years" who is now detained as a detenu at Central Prison, Madurai or his corpus or body before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Sankara Pandian

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference No.24/BCDFGISSSV/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 but we find that Station House Officer of V1 Thirupparankundram Police Station is the sponsoring authority



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[hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2.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.

3.There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.74 of 2023 on the file of V1 Thirupparankundram Police Station for the alleged offences under Sections 341, 294(b), 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and was subsequently altered into Sections 120(B), 147, 341, 294(b), 302 and 506(ii) IPC. Considering the nature of the challenge to the



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impugned detention order, it is not necessary to delve into the factual matrix of the case.

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4.Mr.J.Sankara Pandian, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.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 surrendered before the Judicial Magistrate, Iluppur and remanded to judicial custody in the ground case on 10.02.2023 but the impugned preventive detention order has been made only on 12.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6.Mr.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.



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7. 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.

8. 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



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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.

9.To be noted, the adverse case is in Crime No.119 of 2021 on the file of W1 Thirunagar Police Station for alleged offences under Sections 294(b), 341, 307 and 109 of IPC which was subsequently altered into Sections 109, 294(b), 307, 341, 34 of IPC and Section 25(1-A) of Arms Act, 1959 [occurrence was on 04.04.2021] and therefore time consumed remains unexplained.

10.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 12.04.2023 bearing reference No.24/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Tamil @ Tamilarasan, male, aged 21 years, son



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of Thiru.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.]

04.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

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



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To

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Home Prohibition and Excise Department,
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2.The Commissioner of Police,
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Madurai.

3.The Superintendent of Prison,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
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