



HCP(MD)No.887 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.887 of 2023

Manjula

: Petitioner

Vs.

1.The State of Tamil Nadu

Rep. By its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

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

3.The Superintendent,
Central Prison,
Madurai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records relating to the order of detention passed by the 2nd respondent in his proceedings in Detention Order No.24/2023, dated 25.04.2023, branding the petitioner's



HCP(MD)No.887 of 2023

husband / detenue namely Balasubramani aged about 46 years, son of Velan as Goonda, 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) read with order issued by the Government in G.O.(D)No.99 Home, Prohibition and Excise (XVI) Department, dated 12.04.2023 under Sub-Section (2) of Section 3 of the said Act and quash the same as illegal and direct the respondents to produce the detenue, who is confined in the 3rd respondent's Central Prison, Madurai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.A.Sheik Nasurdeen

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

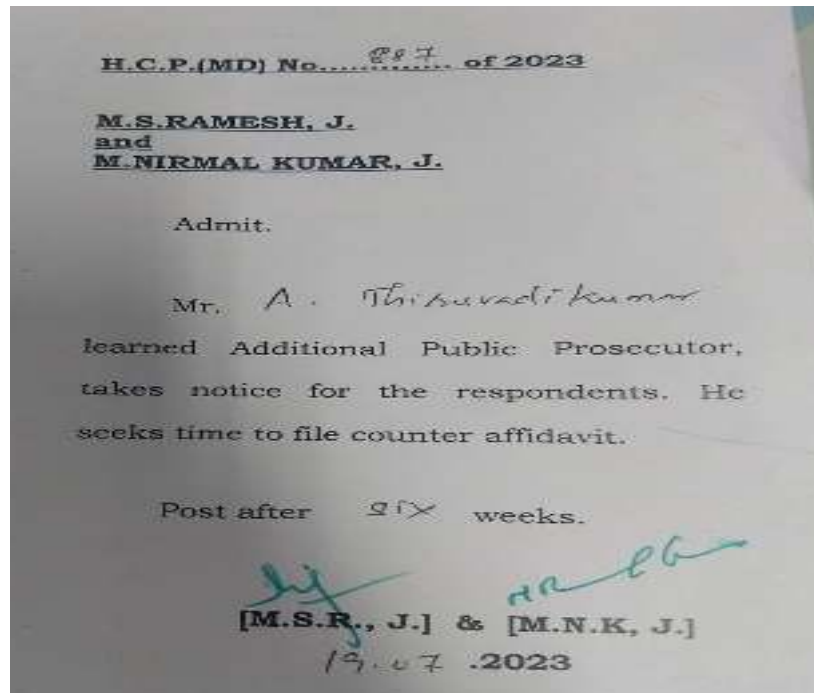
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 19.07.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



WEB COPY



HCP(MD)No.887 of 2023



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.A.Sheik Nasurdeen, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



HCP(MD)No.887 of 2023

5. Captioned HCP has been filed by the wife of the detenu assailing a 'preventive detention order dated 25.04.2023 bearing Detention Order No. 24/2023' [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 Guziliamparai Police Station' is the sponsoring authority [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.

6. Impugned preventive 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.



HCP(MD)No.887 of 2023

7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.23 of 2023 on the file of Guziliamparai Police Station registered under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and subsequently altered into Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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. 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 was arrested on 11.02.2023 but the impugned preventive detention order has been made only on 25.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected and time



HCP(MD)No.887 of 2023

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** 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, the impugned preventive detention order is predicated on a solitary case viz., Crime No.23 of 2023 on the file of Guziliamparai Police Station registered under Section 174 CrPC and subsequently altered into Section 302 IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order.

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



HCP(MD)No.887 of 2023

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.04.2023 bearing reference Detention Order No.24/2023 made by the second respondent is set aside and the detenu Thiru.Balasubramani, male, aged 46 years, son of Thiru.Velan, 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, Madurai.



HCP(MD)No.887 of 2023

To

WEB COPY

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Superintendent,
Central Prison,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.887 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

vsm

H.C.P.(MD)No.887 of 2023

30.10.2023