



HCP(MD)No.872 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.872 of 2023

Gowsalya

... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

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

3. The Superintendent,
Central Prison, Madurai.

4. The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent in Detention Order No.23 of 2023 dated 19.04.2023 and to quash the same and direct respondents to produce the body or person of the detenu, Premkumar, son of Manikandan, aged about 27 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.



WEB COPY



HCP(MD)No.872 of 2023

For Petitioner : Mr.B.Viswanathan for Mr.M.Karunanithi
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 wife of the detenu assailing the 'preventive detention order dated 19.04.2023 bearing reference Detention Order No.23 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth respondent 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 17.07.2023 and Hon'ble predecessor Bench made the following order:

'H.C.P.No.872 of 2023
M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

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



HCP(MD)No.872 of 2023

Post after six weeks.'

WEB COPY

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 Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered as Sections 120(B), 109, 302 r/w 34 IPC in Crime No.105 of 2023 on the file of Dindigul Taluk Police Station.

5. Mr.B.Viswanathan for Mr.M.Karunanithi, 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 16.02.2023 but the impugned preventive detention order has been made only on 19.04.2023 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



HCP(MD)No.872 of 2023

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 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.



HCP(MD)No.872 of 2023

11. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.105 of 2023 on the file of Dindigul Taluk Police Station for alleged offence under Section 302 of the 'Indian Penal Code, 1860 '(Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] altered as Sections 120(B), 109, 302 r/w 34 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.

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 19.04.2023 bearing reference Detention



HCP(MD)No.872 of 2023

Order No.23 of 2023 made by the detaining authority is set aside and the detenu Thiru.Premkumar, aged about 27 years, son of Thiru.Manikandan, 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 : No

Neutral Citation : No

bala

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

To

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

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

3. The Superintendent,
Central Prison, Madurai.

4. The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.

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



WEB COPY



HCP(MD)No.872 of 2023

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

bala

ORDER MADE IN
HCP(MD)No.872 of 2023
DATED : 12.10.2023