



HCP(MD)No.874 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.874 of 2023

Murugan

: Petitioner

Vs.

1.State of Tamil Nadu

Rep. By the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Kanniyakumar District,
Nagercoil.

3.The Superintendent,
Central Prison,
Palaymakottai, Tirunelveli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.26/2023 dated 04.05.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Murugan, about 49



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years, S/o.Abel @ Ponnaiyan, now detained at the Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty forthwith.

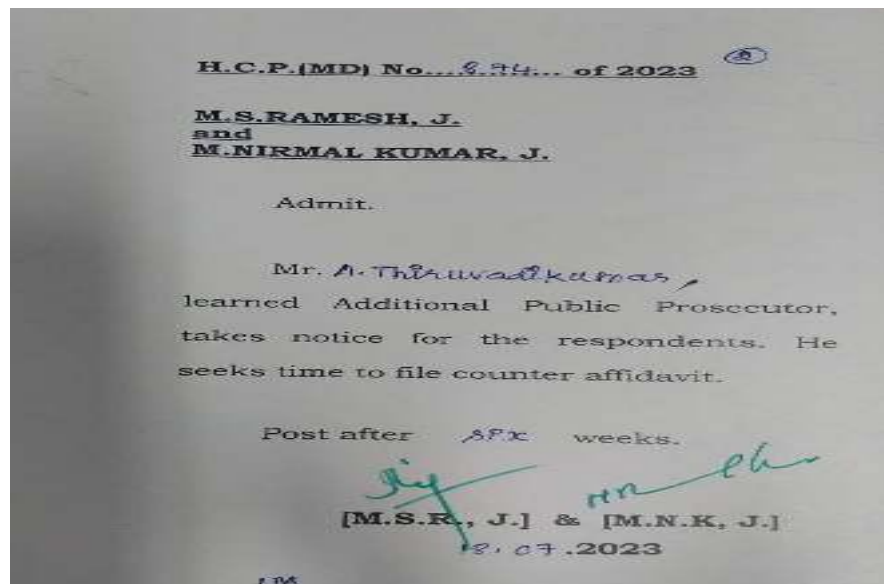
For Petitioner : Mr.N.Pragalathan

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 18.07.2023, 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.N.Pragalathan, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the detenu assailing a 'preventive detention order dated 04.05.2023 bearing reference P.D.No. 26/2023' [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 Marthandam All Women 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.



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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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.02 of 2023 on the file of Marthandam All Women Police Station for alleged offences under Section 376 AB of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(l), 6, 9(n), 9(m) and 10 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO 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.



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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 13.02.2023 but the impugned preventive detention order has been made only on 04.05.2023 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 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



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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.



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12. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.02 of 2023 on the file of Marthandam All Women Police Station for alleged offences under Section 376 AB of IPC and Sections 5(l), 6, 9(n), 9(m) and 10 of POCSO Act and therefore this solitary case is the sole substratum of the impugned preventive detention order.

13. This Bench is informed by the learned Additional Public Prosecutor that in the solitary case, final report has been filed within the prescribed time line and the same is now on the file of Special Court for POCSO Cases, Nagercoil in C.C.No.23 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 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.



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15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.05.2023 bearing reference P.D.No. 26/2023 made by the second respondent is set aside and the detenu Thiru.Murugan, male, aged 49 years, son of Abel @ Ponnaiyan, 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, Palayamkottai.



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To

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



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