



H.C.P(MD)No.924 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.924 of 2023

Nagammal .. Petitioner/mother of the detenu

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi – 11.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

Prayer:- 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 of the respondent No.2 in M.H.S.Confdl.No.46/2023 dated 13.06.2023 and quash the same and direct the respondents to produce the detenu by name Mariselvam alias



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Mari, Son of Esakkimuthu, aged about 23 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.S.Sundarapandian
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.10.2023.

2.Mr.S.S.Sundarapandian, learned counsel on record for petitioner expresses regret for not representing the matter in the previous listing on 17.10.2023.

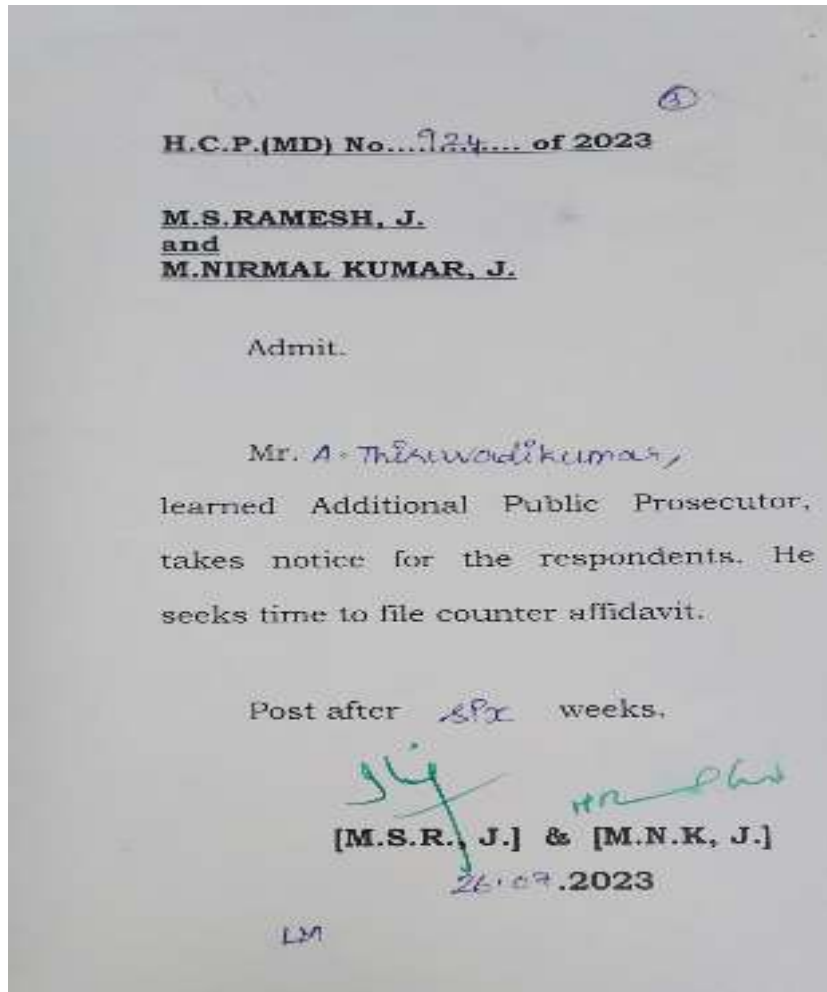
3.When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 26.07.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



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4.It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.

5.Today, captioned matter is in the Final Hearing Board.

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



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7. Captioned HCP has been filed by the mother of detenu assailing a 'preventive detention order dated 13.06.2023 bearing reference M.H.S.Confdl.No.46/2023' [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 'Alangulam 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.

8. 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.



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9. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.113 of 2023 on the file of Alangulam Police Station for alleged offences under Sections 341 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 147, 148, 341, 302 and 120-B read with 109 of IPC. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

10. 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 surrendered on 24.04.2023 but the impugned preventive detention order has been made only on 13.06.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.



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11.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. Considering the facts / circumstances of the case on hand and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

12.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.



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13.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.

14.To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.113 of 2023 on the file of Alangulam Police Station for alleged offences under Sections 341 and 302 of IPC and subsequently altered into Sections 147, 148, 341, 302 and 120-B read with 109 of IPC.



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

16.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 13.06.2023 bearing reference M.H.S.Confdl.No.46/2023 made by the second respondent is set aside and the detenu Thiru.Mariselvam alias Mari, aged 23 years, son of Thiru.Esakkimuthu, 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.)
07.11.2023

Index : Yes/No
Neutral Citation : Yes/No
ps

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



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- To
- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
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Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi – 11.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
 - 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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