



H.C.P(MD)No.935 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.11.2023

Coram

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

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Marimuthu,
S/o.Veeramani,
33rd Ward, Paattali Street,
Adivaram, Palani Town,
Palani Taluk,
Dindigul District.

.. Petitioner/detenuue

VS

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Dindigul District,
Dindigul.

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

.. Respondents



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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 second respondent in Detention Order No.44 of 2023, dated 08.07.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Marimuthu, son of Veeramani, aged about 28 years, now confining as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.M.Muthu Kumar for Mr.R.Prakash
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 28.07.2023, 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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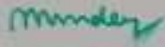
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S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

Admit.

Mr.A.Thiruvadikumar, learned
Additional Public Prosecutor takes notice for
the respondents and seeks time to file counter.

Post after eight weeks.


[S.S.S.R., J.]


[D.B.C., J.]

28.07.2023

pm

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, captioned matter is in the Final Hearing Board.



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4.Mr.M.Muthukumar, learned counsel representing counsel on record for 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 08.07.2023 bearing reference Detention Order No.44 of 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 'Palani town 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,



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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.

7. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.223 of 2023 on the file of Palani Town Police Station for alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 302, 341, 294(b) and 120-B 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.

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 04.05.2023 but the impugned



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preventive detention order has been made only on 08.07.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.

9.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.

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 sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.223 of 2023 on the file of Palani Town Police Station for alleged offence under



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Section 302 of IPC and subsequently altered into Sections 302, 341, 294(b) and 120-B of IPC.

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 08.07.2023 bearing reference Detention Order No.44 of 2023 made by the second respondent is set aside and the detenu Thiru.Marimuthu, aged 28 years, son of Thiru.Veeramani, 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.)
01.11.2023

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

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



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- To
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State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Dindigul District,
Dindigul.
 - 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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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