



HCP(MD)No.943 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.943 of 2023

Maheswari

... Petitioner

vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City.

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

... Respondents

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 Detention Order C.No.59/Detention/C.P.O/T.C/2023 dated 27.06.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Renda alias Rennish son of Ramalingam aged about 21 years, now confining as "Goonda" at Tiruchirappalli Central Prison before this Court and to set him at liberty forthwith.



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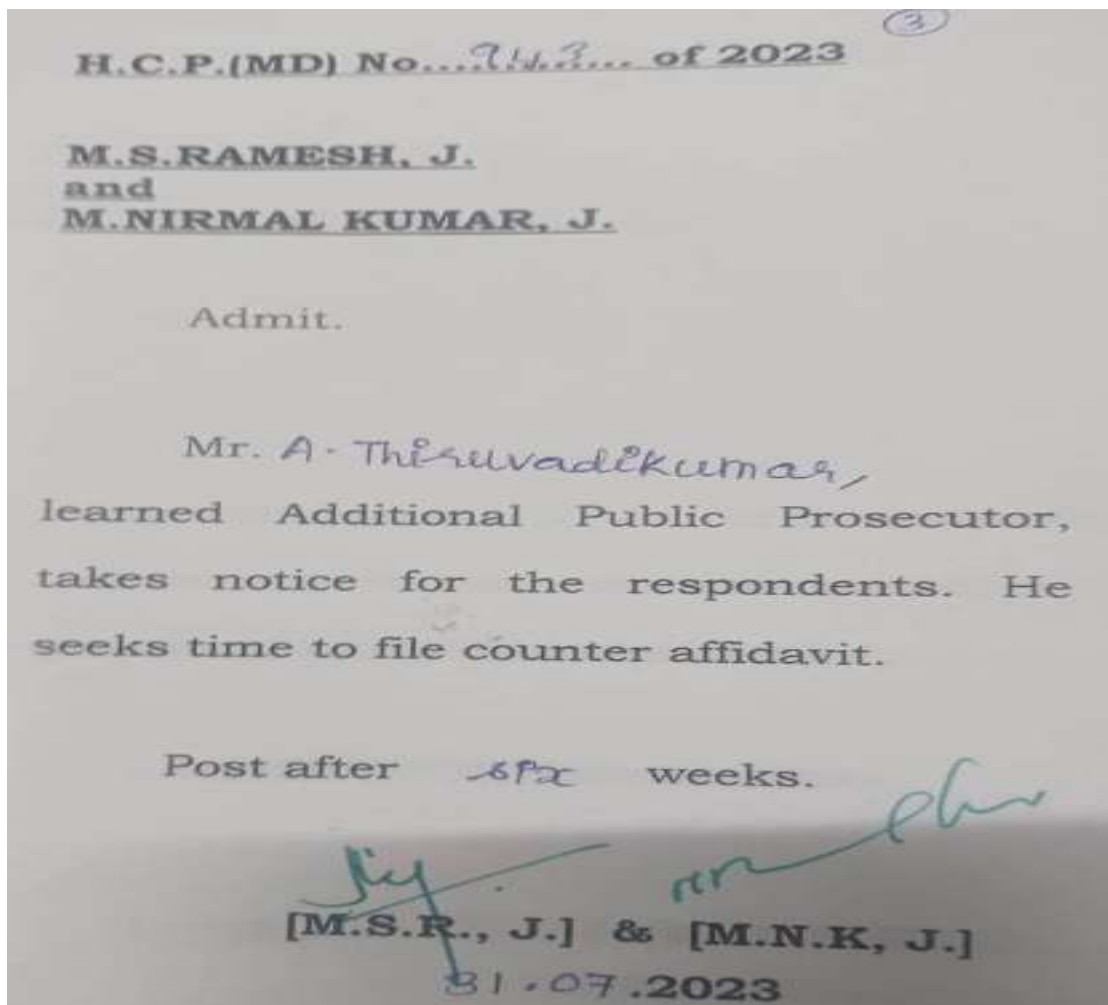
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For Petitioner : Mr.R.Prakash
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 31.07.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





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

5. Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 27.06.2023 bearing reference C.No.59/Detention/C.P.O/T.C/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 and we find that Station House Officer of Ponmalai Police Station, is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and 2nd respondent is the detaining authority as impugned preventive detention order has been made by 2nd respondent.



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6. 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.

7. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.121 of 2023 on the file of Ponmalai Police Station, for alleged offence under Sections 294(b), 323, 324 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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 final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 01.05.2023 but the impugned preventive detention order has been made only on 27.06.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise.

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 first adverse case is in Crime No.50 of 2023 on the file of Tiruchirappalli City Ponmalai Police Station for alleged offences under Sections 294(b), 323, 324, 506(ii) of IPC [alleged



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occurrence on 08.02.2023], second adverse case is Crime No.89 of 2023 on the file of Tiruchirappalli City Ponmalai Police Station for alleged offence under Section 394 of IPC [alleged occurrence on 12.03.2023], ground case is Crime No.121 of 2023 on the file of Ponmalai Police Station, for alleged offence under Sections 294(b), 323, 324 and 506(ii) of IPC [alleged occurrence on 21.03.2023] and therefore time consumed remains unexplained.

13. There is one ground case and two adverse cases. The dates of occurrence in the first and second adverse cases are 08.02.2023 and 12.03.2023 respectively. The first arrest was in the second adverse case on 12.04.2023. Thereafter, there was a formal arrest in the first adverse case and the ground case on 01.05.2023.

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

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.06.2023 bearing reference C.No. 59/Detention/C.P.O/T.C/2023 made by the second respondent is set aside



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and the detenu Thiru.Renda alias Rennish aged about 21 years, son of Thiru.Ramalingam, 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.)
06.11.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

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

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City.

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

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

6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

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ORDER MADE IN
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DATED : 06.11.2023