



HCP(MD)No.965 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

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

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Vinothini

... Petitioner

vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul.
4. The Superintendent of Prison,
Central Prison, Madurai.

... 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 second respondent in Detention Order No.35/2023 (Drug Offender) dated 10.06.2023 and quash the same and direct the respondents to produce the detenu Pandithurai S/o. Murugan, Male, aged 32 years who is detained at Central Prison, Madurai before this Court and set him at liberty.



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For Petitioner : Mr.B.Kumaresan
for Mr.R.Mariappan

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 04.08.2023, 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.



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

4. Mr.B.Kumaresan, learned counsel representing the 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 wife of the detenu assailing the 'preventive detention order dated 10.06.2023 bearing reference in Detention Order No.35/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, third 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.

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



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1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) 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. 265 of 2023 on the file of Prohibition Enforcement Wing, Dindigul, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985, [hereinafter 'NDPS Act' for the sake of brevity and convenience]. 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 final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 06.03.2023 but the impugned preventive detention order has been made only on 10.06.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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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*



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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 impugned preventive detention order is predicated on a solitary case viz., Crime No.265 of 2023 on the file of Prohibition Enforcement Wing, Dindigul, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act [alleged occurrence on 05.03.2023] and therefore this solitary case is the sole substratum of the impugned preventive detention order.

13. As regards the ground case i.e., Crime No.265 of 2023 on the file of Prohibition Enforcement Wing, Dindigul, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act, learned Prosecutor submits that the Essential Commodities Act and Narcotic



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Drugs Psychotropic Substances Act cases Court, Madurai is now in siezin of the matter. Learned Prosecutor, on instructions (instructed by Mr.M.Muthukumar, Sub Inspector of Police, PEW/Dindigul), submits that in the trial Court final report (charge sheet) dated 30.08.2023 has been filed vide e-filing MDUNDPS: Filing No.CC/3850/2013 on 01.09.2023 and it is yet to be taken on file. Be that as it may, as regards the trial Court, if the filing of the final report/charge sheet is within time as submitted by learned Prosecutor, it means that the detenu will have to seek regular bail. We make it clear that if the detenu seek regular bail, the same will be considered by the trial Court on its own merits and in accordance with law, [more particularly, Section 37 of NDPS Act] untrammelled by this order which has been made for the purpose of testing the impugned preventive detention order in a habeas legal drill. .

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 10.06.2023 bearing reference in Detention Order No.35/2023 made by the second respondent is set aside



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and the detenu Thiru.Pandithurai, aged about 32 years, son of Thiru.Murugan, 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

Index : Yes
Neutral Citation : Yes
PKN

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

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul.
4. The Superintendent of Prison,
Central Prison, Madurai.
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.

PKN

ORDER MADE IN
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DATED : 30.10.2023