WEB COPY

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.967 of 2023

Jeevitha ... Petitioner

vs.

1.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,
Batlagundu Police Station,
Dindigul District.

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 2nd respondent in Detention Order No.38/2023 (Drug Offender) dated 24.06.2023 and quash the same and

https://www.mhc.tn.gov.in/judis

WEB COPY

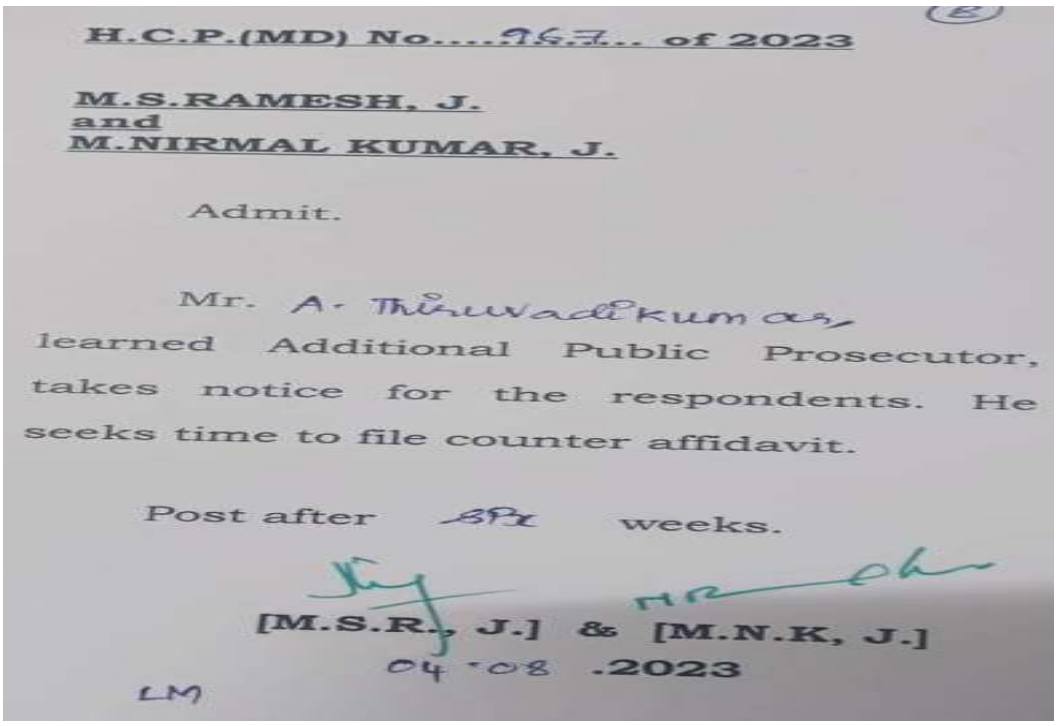
direct the respondents to produce the detenu Karthick son of Mayandi, Male, aged 34 years who is detained at Central Prison, Madurai, before this Court and set him at liberty.

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

O R D E R

[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:



H.C.P.(MD) No....967... of 2023

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadi Kumar, learned Additional Public Prosecutor, takes notice for the respondents. He seeks time to file counter affidavit.

Post after 8 weeks.

[M.S.R., J.] & [M.N.K, J.]
04.08.2023

LM

https://www.mhc.tn.gov.in/judis

WEB COPY

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.S.Muniyandi, 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 wife of the detenu assailing the 'preventive detention order dated 24.06.2023 bearing reference Detention Order No.38/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, 3rd 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.

https://www.mhc.tn.gov.in/judis

WEB COPY

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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

7. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.142 of 2023 on the file of Batlagundu Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 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.

https://www.mhc.tn.gov.in/judis

WEB COPY

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 28.03.2023 but the impugned preventive detention order has been made only on 24.06.2023 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

https://www.mhc.tn.gov.in/judis

WEB COPY

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 impugned preventive detention order is predicated on a solitary case viz., Crime No.142 of 2023 on the file of

https://www.mhc.tn.gov.in/judis

WEB COPY

Batlagundu Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS 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 dated 12.09.2023 has been filed on 21.09.2023 vide E-filing No.03/2023 before the NDPS Court, Madurai. If the detenue moves for regular bail in the Trial Court, we make it clear that the Trial Court shall consider the bail petition on its own merits and in accordance with law [more particularly, NDPS Act and Section 37 thereat] untrammeled by this order which has been made in a habeas legal drill for the limited purpose of testing the impugned preventive detention order.

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 24.06.2023 bearing reference in

https://www.mhc.tn.gov.in/judis

WEB COPY

Detention Order No.38/2023 made by the second respondent is set aside and the detenu Thiru. Karthick son of Mayandi, aged 34 years, 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, Madurai.

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
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,
Batlagundu Police Station,
Dindigul District.

4. The Superintendent of Prison,
Central Prison, Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

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.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

bala

ORDER MADE IN
HCP(MD)No.967 of 2023
DATED : 06.11.2023

https://www.mhc.tn.gov.in/judis