



HCP(MD)No.981 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.981 of 2023

Latha

: Petitioner

Vs.

1.State of Tamil Nadu, rep. by,
The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai – 600 009.

2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Thanjavur District, Thanjavur.

3.The Superintendent of Prison,
Central Prison,
Trichy.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records pertaining to the detention order passed by the 2nd respondent in Detention Order in P.D.No. 45/2023 dated 16.07.2023 and set aside the same as illegal and direct the



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respondents to produce the body or person of the petitioner's son namely Muthu, S/o.Rajendran, Male, aged about 25 years, who is detained in Central Prison, Trichy before this Hon'ble Court and set him at liberty.

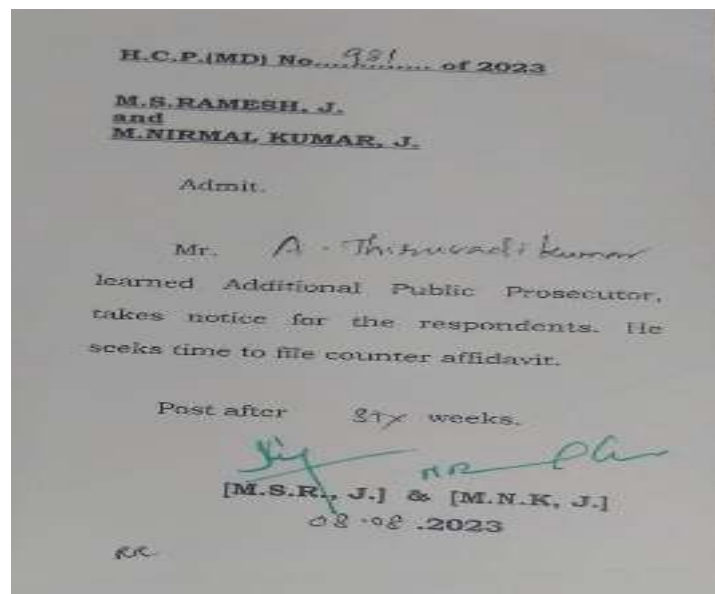
For Petitioner : Mr.A.Joel Paul Antony

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 08.08.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





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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.A.Joel Paul Antony, learned counsel on record for HCP 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 mother of the detenu assailing a 'preventive detention order dated 16.07.2023 bearing reference P.D.No. 45/2023' [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 Kumbakonam All Women 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.



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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, 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes the sole substratum of the impugned preventive detention order is Crime No.08 of 2023 on the file of Kumbakonam All Women Police Station registered under Sections 5(g), 5(m) read with 6 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity]. 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 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 15.05.2023 but the impugned preventive detention order has been made only on 16.07.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits 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



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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.



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12. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.08 of 2023 on the file of Kumbakonam All Women Police Station registered under Sections 5(g), 5(m) and 6 of POCSO Act and therefore this solitary case is the sole substratum of the impugned preventive detention order.

13. This Bench is informed that in the solitary case, final report has been filed within the prescribed time line, according to the learned Additional Public Prosecutor and the same is now on the file of Special Court for POCSO Cases, Thanjavur in Spl.S.C.No.92 of 2023. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail application on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.

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



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15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.07.2023 bearing reference P.D.No. 45/2023 made by the second respondent is set aside and the detenu Thiru.Muthu, male, aged 25 years, son of Rajendran, 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

vsm
Index : Yes
Neutral Citation : Yes

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



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State of Tamil Nadu
Home, Prohibition and Excise (XVI) Department,
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- 2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 4.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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