



HCP(MD)No.1017 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1017 of 2023

Peter

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 9.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.



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4.The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records, connected with the detention order of the second respondent in M.H.S.Confdl.No.39/2023 dated 01.05.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Pregano (Brigan), son of Peter, aged about 35 years now detained as “Drug Offender” at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Mano Kumar

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.SUNDAR, J.]

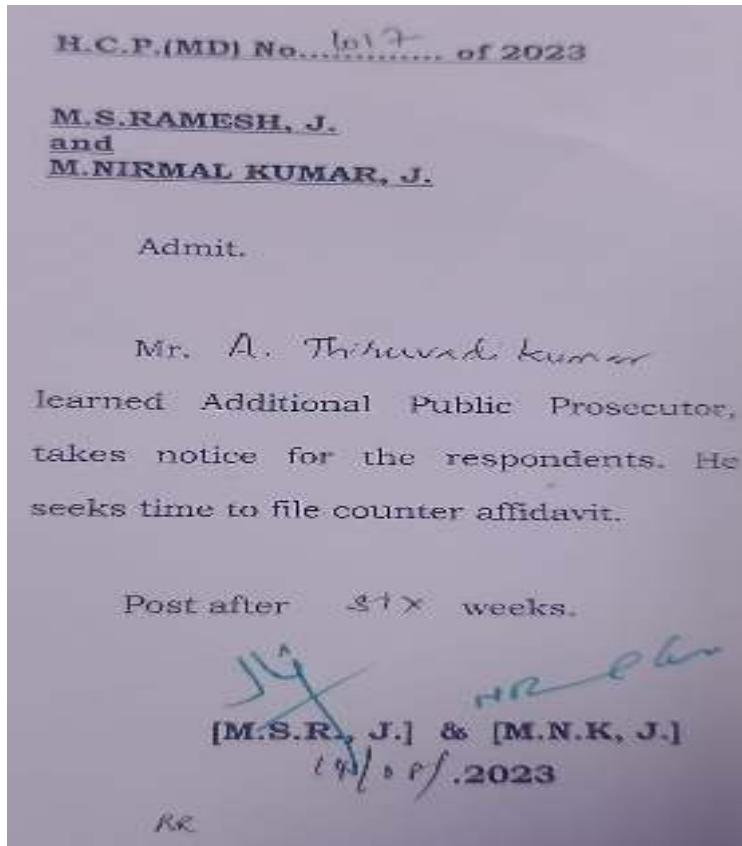
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 14.08.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



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



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5.Captioned HCP has been filed by the detenu assailing a 'preventive detention order dated 01.05.2023 bearing M.H.S.Confdl No.39/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth respondent 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, 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.There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime



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No.95 of 2023 on the file of Tirunelveli Taluk Police Station registered for the offences sunder Sections 8(c), 20(b)(ii)(B) and 25 of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of 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 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 07.04.2023 but the impugned preventive detention order has been made only on 01.05.2023 resulting in live and proximate link between grounds 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.



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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



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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.95 of 2023 on the file of Tirunelveli Taluk Police Station registered for the offences under Sections 8(c), 20(b)(ii)(B) and 25 of NDPS Act, and therefore this solitary case is the sole substratum of the impugned preventive detention order.

13.In the case on hand, we are informed that the solitary case which constitutes the sole substratum of the impugned preventive detention order is now C.C.No.793 of 2023 on the file of Judicial Magistrate No.III, Tirunelveli and the detenu has already been granted default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] as the final report was not filed within time.



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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 01.05.2023 bearing reference M.H.S.Confdl No.39/2023 made by the second respondent is set aside and the detenu Thiru.Brigan, male, aged 35 years, son of Thiru.Peeter, 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

Internet : Yes

Neutral Citation : Yes

MR

P.S: Registry to forthwith communicate this order to jail authorities in Central Prison, Palayamkottai.



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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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Chennai – 9.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

ORDER MADE IN
H.C.P.(MD)No.1017 of 2023

01.11.2023