



H.C.P(MD)Nos.1009 & 1011 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

Coram

THE HON'BLE MR.JUSTICE M.SUNDAR
and
THE HON'BLE MR. JUSTICE R.SAKTHIVEL

H.C.P(MD)Nos.1009 & 1011 of 2023

Karthik @ Sullan Karthik

.. Petitioner/Detenu in H.C.P(MD)No.1009 of 2023

Praveenkumar @ Sirippu

.. Petitioner/Detenu in H.C.P(MD)No.1011 of 2023

vs

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

**2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.**

**3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.**

.. Respondents in both HCPs

**Prayer in H.C.P(MD)No.1009 of 2023:- Petition filed under Article 226
of the Constitution of India praying for issuance of a writ of Habeas**



H.C.P(MD)Nos.1009 & 1011 of 2023

Corpus calling for the entire records connected with the detention order of the second respondent in No.48/BCDFGISSSV/2023 dated 17.06.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Karthik @ Sullan Karthik, son of Senthil, aged about 26 years, now detained as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

Prayer in H.C.P(MD)No.1011 of 2023:- 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 second respondent in No.49/BCDFGISSSV/2023 dated 17.06.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Praveenkumar @ Sirippu, son of Sankar, aged about 26 years, now detained as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
(In both HCPs)

For Respondents : Mr.A.Thiruvadi Kumar
(In both HCPs) Additional Public Prosecutor



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COMMON ORDER

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

This common order will now govern captioned two 'Habeas Corpus Petitions [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of brevity, convenience and clarity].

2.H.C.P(MD)No.1009 of 2023 shall be referred to as 'I HCP' and H.C.P(MD)No.1011 of 2023 shall be referred to as 'II HCP' for the sake of convenience and clarity.

3.I HCP and II HCP were listed in the admission board on 11.08.2023 and the following orders were made in the admission board by Hon'ble Coordinate Predecessor Bench:



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H.C.P.(MD) No. 1009 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 5 weeks.

[M.S.R., J.] & [M.N.K, J.]
11.08.2023

yuvra

II HCP:

H.C.P.(MD) No. 1011 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 5 weeks.

[M.S.R., J.] & [M.N.K, J.]
11.08.2023

yuvra



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4.It has now become necessary to set out factual matrix in a

nutshell.

5.Short facts are that one Thiru.Karthik @ Sullan Karthik, aged 26 years, Son of Thiru.Senthil is detenu in I HCP and Thiru.Praveenkumar @ Sirippu, aged 26 years, Son of Thiru.Sankar is detenu in II HCP. The detenues are HCP petitioners in both HCPs. The Commissioner of Police, Madurai City is the detaining authority. The detaining authority has passed two preventive detention orders both dated 17.06.2023 one bearing reference No.48/BCDFGISSSV/2023 (Karthik @ Sullan Karthik) and another bearing reference No.49/BCDFGISSSV/2023 (Praveenkumar @ Sirippu). These two preventive detention orders have been called in question in the captioned HCPs and therefore, the same shall be collectively referred to as 'impugned preventive detention orders' for the sake of convenience and clarity and wherever necessary, preventive detention order qua Karthik @ Sullan Karthik (I HCP) shall be referred to as 'I impugned preventive detention order' and preventive detention order qua Praveenkumar @ Sirippu (II HCP) shall be referred to as 'II impugned



preventive detention order'. Both impugned preventive detention orders have been made branding the respective detenues as 'Goonda' within the meaning of Section 2(f) of '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 brevity, convenience and clarity].

6.As regards the ground case, both detenues are co-accused in ground case. The ground case is Crime No.554 of 2023 on the file of D1 Tallakulam Police Station for alleged offences under Sections 341, 294(b), 394 read with 397 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity]. As regards I HCP, there are two adverse cases, one of the year 2020 and another of the year 2022 (date of occurrence 05.03.2022). As regards II HCP, there are three adverse cases, one of the year 2020, another of the year 2021 and third one is of the year 2022 (alleged occurrence on 24.05.2022).



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7.Mr.R.Alagumani, learned counsel on record for HCP petitioners predicated his campaign against impugned preventive detention orders on one point and that one point is 'live and proximate link' between grounds of detention and purpose of detention has snapped. In support of his argument, learned counsel pointed out that the detenues were arrested in the ground case on 22.05.2023 but the impugned preventive detention orders have been made only on 17.06.2023. Learned counsel also pressed into service, oft-quoted ***Sushanta Kumar Banik's case*** [***Sushanta Kumar Banik Vs. State of Tripura & others*** reported in ***2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333***].

8.In examining ***Sushanta Kumar Banik's*** point, we perused the grounds as articulated by HCP petitioners in the support affidavits.

This is vide paragraph (f) which reads as follows:

'f. That the detenu was arrested on 22.05.2023, the detaining authority passed detention order against the detenu after 26 days ie., on 17.06.2023. But reason for the above said delay for passing the detention did not explain by the detaining authority in the grounds of detention and booklet. That the unexplained reason for the delay for passed the detention order would vitiates the detention order.'



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9.This has been met in the counter-affidavit filed by the detaining authority ie., Commissioner of Police, Madurai City and the burden of the song in the counter-affidavit is as follows:

'As the detenu took efforts to come out on bail, by filing bail applications repeatedly in the said ground case, the Sponsoring Authority filed an affidavit on 16.06.2023, along with all relevant documents, requesting action against him under Tamil Nadu Act 14/1982, to prevent his unlawful activities. The detention order was passed on 17.06.2023, without delay, after perusing the material documents submitted by the Sponsoring Authority and after arriving at subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order. Hence, the contention of the petitioner is not sustainable on merits.'

10.Adverting to the counter-affidavit, learned Prosecutor submitted that barrage of bail petitions were moved and that consumed time in making of impugned preventive detention orders. To be noted, as in ***Sushanta Kumar Banik's*** case law, live and proximate link between grounds of detention and purpose of detention snapping point can be either on unexplained delay or unreasonable / undue delay. In the case on hand, we find that it is unexplained delay. The reason is, a perusal of the grounds of impugned preventive detention orders makes



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it clear that even according to detaining authority, the detenues have moved only one bail petition in the ground case and that was dismissed by trial Court on 22.05.2023. Thereafter, detenues have filed bail petition again in Sessions Court [to be noted, first bail petition was dismissed by learned Magistrate] and the Sessions Court bail application was pending. Therefore, the argument and averment as articulated in the counter-affidavit extracted supra do not convincingly explain the time consumed between date of arrest and date of impugned preventive detention orders. As would be evident from the narrative supra, adverse cases have clearly become stale as they are of the years 2020 to 2022. It cannot be gainsaid that time was consumed in collecting and collating material as regards ground case. This means that ***Sushanta Kumar Banik's*** point applies to the case on hand.

11.Before we drop the curtains on the captioned matters by writing the operative portions of this common order, we make it clear that ***Sushanta Kumar Banik's*** point cannot be applied in terms of number of days. It is not a numeric expression. It is a legal principle or in other words it is a legal proposition and the proposition is to test



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whether live and proximate link between grounds of detention and purpose of detention has snapped or not. In the case on hand, considering the facts and circumstances of the case and the sum totality of the trajectory the matter has taken and also taking into account the adverse cases cited in the grounds of impugned preventive detention orders, we come to the conclusion that captioned matters are those in which live and proximate link has snapped. Therefore we add a caveat that this common order will not serve across the board precedent in all cases by citing that 26 days delay has been applied to say that live and proximate link between grounds of detention and purpose of detention has snapped. To put it differently, live and proximate link between grounds of detention and purpose of detention point snapping has to be tested on a case to case basis taking into account the sum totality of the facts and circumstances of the case which we have done.

12.Ergo, the sequitur is, captioned I HCP is allowed. Impugned preventive detention order dated 17.06.2023 bearing reference No.48/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Karthik @ Sullan Karthik, aged 26 years,



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son of Thiru.Senthil, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

13.Apropos, the sequitur is, captioned II HCP is allowed. Impugned preventive detention order dated 17.06.2023 bearing reference No.49/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Praveenkumar @ Sirippu, aged 26 years, son of Thiru.Sankar, 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.)
18.12.2023

Index : Yes

Neutral Citation : Yes

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Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
 - 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.
 - 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
 - 4.The 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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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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