



HCP(MD)No.1029 of 2023

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.1029 of 2023

Nadimuthu

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St.George, Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Mayiladuthurai District, Mayiladuthurai.
 3. The Superintendent of Prison,
Trichy Central Prison, Trichy District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for entire records connected with the detention order of the second respondent in C.O.C.No.13/2023 dated 17.03.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Nadimuthu S/o. Packirisamy, Male, aged 42 years, now confining as 'Sexual Offender' at Central Prison, Trichy before this Court and set him at liberty forthwith.



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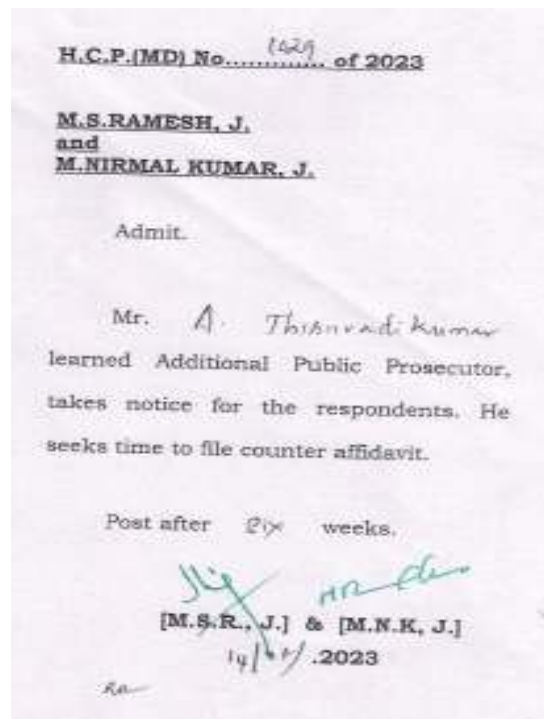
For Petitioner : Mr.S.Rameshkumar

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 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.S.Rameshkumar, 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 detenu assailing the 'preventive detention order dated 17.03.2023 bearing reference in C.O.C.No.13/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of All Women Police Station, Sirkali, 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 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 sole substratum of the impugned preventive detention order is Crime No. 04 of 2023 on the file of All Women Police Station, Sirkali, for alleged offences under Section 6 read with Sections 5(l), 5(n) and 5(p) 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.

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 21.01.2023 but the impugned preventive detention order has been made only on 17.03.2023 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. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public 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 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.

12. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.04 of 2023 on the file of All Women Police Station, Sirkali, for alleged offences *inter-alia* under Section 6 read with Sections 5(l), 5(n) and 5(p) of POCSO Act and



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therefore this solitary case is the sole substratum of the impugned preventive detention order.

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

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.03.2023 bearing reference in C.O.C.No.13/2023 made by the second respondent is set aside and the detenu Thiru.Nadimuthu, aged about 42 years, son of Thiru.Packirisamy, 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
Neutral Citation : Yes
PKN

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



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To

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1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Mayiladuthurai District, Mayiladuthurai.
3. The Superintendent of Prison,
Trichy Central Prison, Trichy District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. 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
HCP(MD)No.1029 of 2023

DATED : 06.11.2023