



HCP(MD)No.1028 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1028 of 2023

Rajasekar

: Petitioner

Vs.

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,
Office of the District Magistrate and District Collector,
Karur District.

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

: Respondents



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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 Cr.M.P.No.11/2023 dated 06.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Rajasekar, son of Pitchai Thevar, aged about 38 years now detained as “Goonda” at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

O R D E R

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

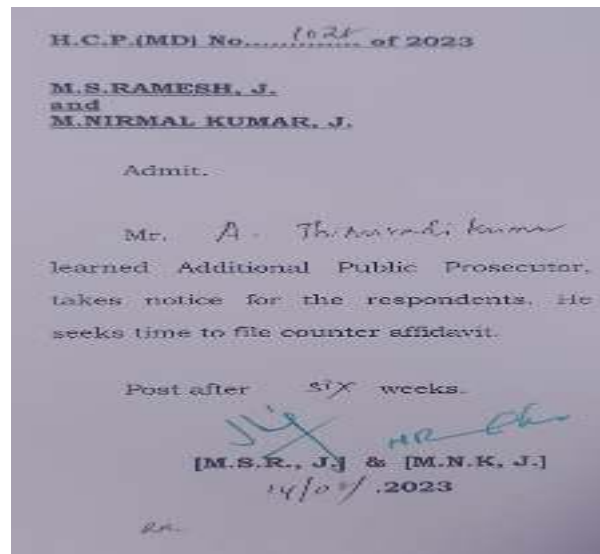
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 14.08.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



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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, captioned matter is in the Final Hearing Board.

4.Mr.R.Alagumani, learned counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all respondents are before us.

5.Captioned HCP has been filed by the detenu assailing a 'preventive detention order dated 06.07.2023 bearing reference Cr.M.P.No.11/2023' [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



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find that Station House Officer of 'Thanthonimalai 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.

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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

7.The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No. 228 of 2023 on the file of Thanthonimalai Police Station for the alleged offence under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of 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 05.05.2023 but the impugned preventive detention order has been made only on 06.07.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.

9.Mr.S.Ravi, 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 and after noticing the trajectory the matter took, Hon'ble Supreme Court held that the



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



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13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.07.2023 bearing reference Cr.M.P.No.11/2023 made by the second respondent is set aside and the detenu Thiru.Rajasekar, aged 38 years, son of Thiru.Pitchai Thevar, 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.]
04.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Trichy. All concerned are 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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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
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