



HCP(MD)No.1075 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

H.C.P.(MD)No.1075 of 2023

Arunprakash

: Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai District, Madurai.

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

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connected with the detention order of the second respondent in Detention Order B.C.D.F.G.I.S.S.S.V.No.13/2023 dated 12.04.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Arunprakash son of Vairavan, aged about 34 years, now confining as "Sexual Offender" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference B.C.D.F.G.I.S.S.S.V.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 but we find that Station House Officer of M.Chathirapatti Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].



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2.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.

3.There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.107 of 2022 on the file of M.Chathirapatti Police Station for the alleged offences under Sections 294(b), 341, 323, 365, 376, 392, 109, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and was subsequently altered into Sections 294(b), 341, 323, 365, 376, 392 and 506(ii) IPC. 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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4.Mr.R.PRakash, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.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 surrendered before the Judicial Magistrate, Iluppur and remanded to judicial custody in the ground case on 02.02.2023 but the impugned preventive detention order has been made only on 12.04.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6.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.

7.We remind ourselves of ***Sushanta Kumar Banik's*** case ***[Sushanta Kumar Banik Vs. State of Tripura & others reported***



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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 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.

8.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**



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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.

9.To be noted, the adverse case is in Crime No.79 of 2022 on the file of M.Chathirapatti Police Station for alleged offence under Section 392 of IPC [occurrence was on 27.08.2022] and therefore time consumed remains unexplained.

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

11.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference B.C.D.F.G.I.S.S.S.V.No.13/2023 made by the second respondent is set aside and the detenu Thiru.Arunprakash, male, aged 34 years, son of Thiru.Vairavan, 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.K.M.,J.]
05.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

P.S: Registry to forthwith communicate this order to Jail



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authorities in Central Prison, Madurai.

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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.
and
R.KALAIMATHI, J.

MR

ORDER MADE IN
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