



HCP(MD)No.1051 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.1051 of 2023

Selvam

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

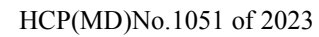
2. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent in his proceedings C.No.50/detention/C.P.O/T.C/2023 dated 05.06.2023 and quash the same and direct the respondents to produce the detenu Palraj S/o. Durai, Male, aged 25 years who is now detained at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.S.Santhakumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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

(4)

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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. Ar. Theeravallakumar,
learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after 8th weeks.


[M.S.R., J.] & [M.N.K, J.]
21.08.2023

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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*.



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3. Today, the captioned matter is in the Final Hearing Board.

4. Mr.S.Santhakumar, 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 brother of the detenu assailing the 'preventive detention order dated 05.06.2023 bearing reference in C.No.50/detention/C.P.O/T.C/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, Cantonment, Tiruchirappalli City, 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.

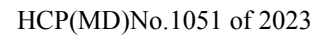
7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No. 16 of 2023 on the file of All Women Police Station, Cantonment, Tiruchirappalli City, for alleged offences under Sections 450, 506(1), 354-A of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] read with 5(1), 6(1) of 'the Protection of Children from Sexual Offences Act, 2012 [No.32 of 2012]' [hereinafter 'POCSO Act' for the sake of convenience and clarity] and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002, [hereinafter 'TNHWA' for the sake of brevity]. 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 22.04.2023 but the impugned preventive detention order has been made only on 05.06.2023 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,



11. To be noted, ***Banik*** case has been respectfully followed by this in ***Gomathi Vs. The Principal Secretary to Government and*** reported vide Neutral Citation of Madras High Court being ***MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu and*** reported vide Neutral Citation of Madras High Court being ***MHC/733, Sangeetha Vs. The Secretary to the Government and*** reported vide Neutral Citation of Madras High Court being ***MHC:1110, N.Anitha Vs. The Secretary to Government and*** reported vide Neutral Citation of Madras High Court being ***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.16 of 2023 on the file of All



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Women Police Station, Cantonment, Tiruchirappalli City, for alleged offences *inter-alia* under Sections 450, 506(1), 354-A of IPC read with 5(1), 6(1) of POCSO Act and Section 4 of TNHWA and 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 05.06.2023 bearing reference in C.No. 50/detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Palraj, aged about 25 years, son of Thiru.Durai, 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.)
30.10.2023

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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.
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.1051 of 2023

DATED : 30.10.2023