



H.C.P(MD)No.1058 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.11.2023

Coram

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

H.C.P(MD)No.1058 of 2023

Kala

.. Petitioner

VS

**1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.**

**2.The District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.**

**3.The Superintendent,
Central Prison,
Tiruchirapalli.**

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in is proceedings in Cr.M.P.No.11 of 2023 dated 22.06.2023 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Mohan @ Mohanasundaram, S/o.Manikandan, Male, aged about 22 years,



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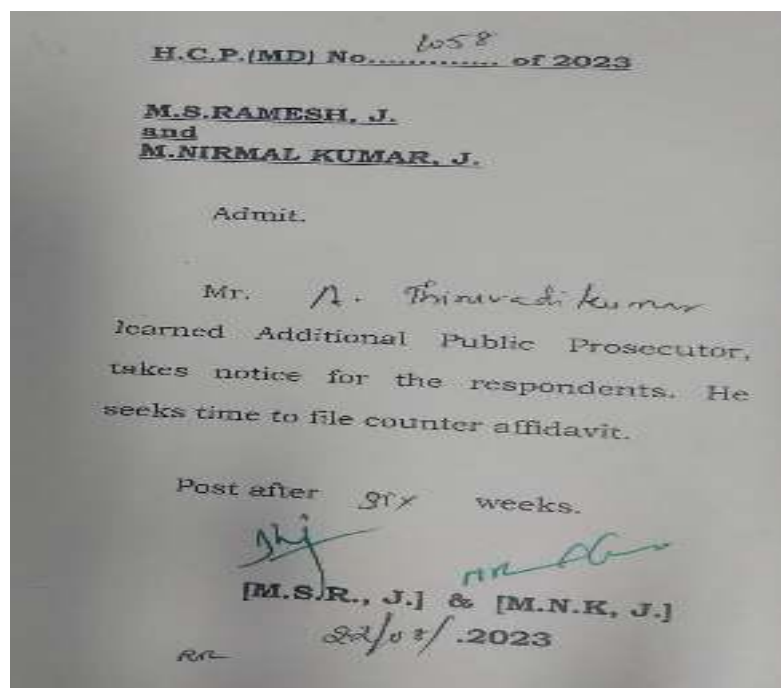
who is detained at Central Prison, Tiruchirapalli before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakarn
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 22.08.2023, 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.K.M.Karunakaran, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the mother of the detenu assailing a 'preventive detention order dated 22.06.2023 bearing reference Cr.M.P.No. 11 of 2023.' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Somarasampettai Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

6. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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. There are three adverse cases and one ground case. The ground case which constitutes the substantial part of the impugned preventive detention order is Crime No.147 of 2023 on the file of Somarasampettai Police Station registered under Sections 392 r/w 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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. Learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 17.05.2023 but the impugned preventive detention order has been made only on 22.06.2023.



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9. Mr.A.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.

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.



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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 first adverse case is in Crime No.58 of 2022 on the file of Jeeyapuram Police Station, (occurrence was on 27.02.2022) registered under Sections 294(b), 323 and 506(ii) IPC, the second adverse case is in Crime No.334 of 2022 on the file of Somarasampettai Police Station (occurrence was on 19.10.2022) registered under Section 294 (b) IPC and the third adverse case is in Crime No.387 of 2022 on the file of Somarasampettai Police Station (occurrence was on 12.12.2022) registered under Sections 294 (b), 323, 448, 427 and 506(ii) IPC and therefore time consumed remains unexplained.



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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 22.06.2023 bearing reference Cr.M.P.No.11/2023 made by the second respondent is set aside and the detenu Thiru.Mohan alias Mohanasundaram, aged 22 years, son of Thiru.Manikandan, 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.)
07.11.2023

Index : Yes

Neutral Citation : Yes

vsm

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



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

vsm

To

- 1.The Principal Secretary to Government,
Home, (Prohibition and Excise) Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.
- 3.The Superintendent,
Central Prison,
Tiruchirapalli.
- 4.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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