



H.C.P.(MD) No.1084 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.11.2023

CORAM

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

H.C.P. (MD) No.1084 of 2023

Vasuki

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Thanjavur District, Thanjavur.

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 pertaining to the order made in P.D.No.39/2023 dated 25.06.2023 and quash the same and direct the respondent to produce the body or person of the petitioner's son namely Umar Farooq @ Vishwa, son of Perumal aged about 23 years who is

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detained at Central Prison, Tiruchirappalli before this Honble Court and set him at liberty.

For Petitioner : Mr.P.Mani Anandh
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 28.08.2023, 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. Captioned HCP has been filed by the mother of the detenu assailing the 'preventive detention order dated 25.06.2023 bearing reference in P.D.No.39/2023' [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 Thiruppanandal Police Station, 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.

5. 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,



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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.

6. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.222 of 2023 on the file of Thiruppanandal Police Station, for the alleged offences under Sections 294(b), 307 and 506(ii) 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.

7. 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 26.04.2023 but the impugned preventive detention order has been made only on 25.06.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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8. Mr.P.Mani Anandh, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

9. 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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10. 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.

11. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.222 of 2023 on the file of Thiruppanandal Police Station for alleged offences under Sections 294(b), 307 and 506(ii) of IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order.

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 25.06.2023 bearing reference P.D.No. 39/2023 made by the second respondent is set aside and the detenu Thiru.Umar Farooq @ Vishwa, male, aged 23 years, son of Thiru.Perumal 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.)

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Index : Yes/No

Neutral Citation : Yes/No

PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli. All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard 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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To

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1. The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
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.**

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