



HCP(MD)No.1102 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.1102 of 2023

R.Subramani

: Petitioner

Vs.

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

2.The District Collector cum District Magistrate,
Theni District,
Theni.

3.The Superintendent of Prison,
Special Prison for Women,
Madurai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the proceedings of the 2nd respondent made in Detention Order No.37/2023 dated 30.05.2023 and quash the same and set the petitioner's sister by name



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Murugeswari, W/o.Murugesan, aged about 57 years at liberty from the Superintendent, Special Prison for Women, Madurai/3rd respondent.

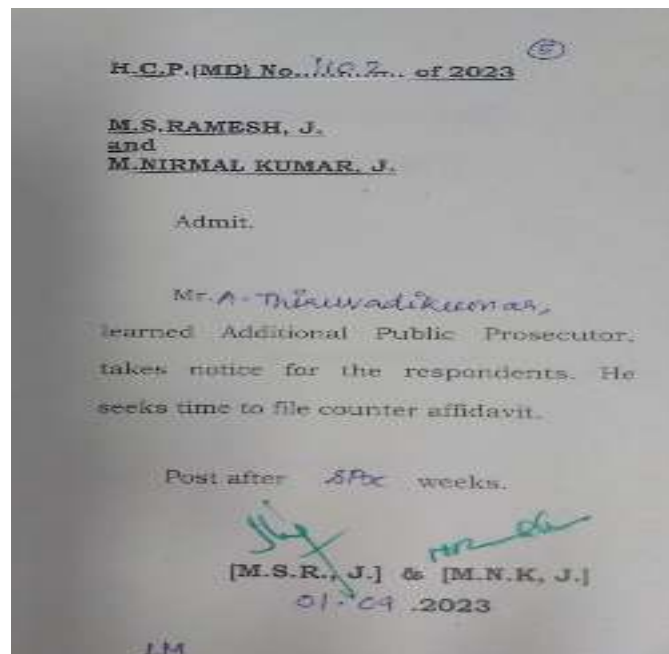
For Petitioner : Mr.K.Prabakaran

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 01.09.2023, 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. Mr.K.Prabakaran, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

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

5. Captioned HCP has been filed by the brother of detenu assailing a 'preventive detention order dated 30.05.2023 bearing Detention Order No. 37/2023' [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 Prohibition Enforcement Wing, Theni' 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.



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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

7. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.202 of 2023 on the file of Prohibition Enforcement Wing, Theni registered under Sections 8(c) read with 20(b)(ii)(B), 25 and 29(1) of 'Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No.61 of 1985)' [hereinafter 'NDPS Act' for the sake of convenience and clarity], which was subsequently altered into Sections 8(c) read with 20(b)(ii)(C), 25 and 29(1) of NDPS Act. 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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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 detainee was arrested on 12.03.2023 but the impugned preventive detention order has been made only on 30.05.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits 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



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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.

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.



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12. To be noted, out of the three adverse cases, the first adverse case is in Crime No.63 of 2017 on the file of Narcotic Intelligence Bureau, Dindigul Police Station (occurrence was on 09.05.2017), second adverse case is in Crime No.42 of 2020 on the file of Veda sandur Police Station (occurrence was on 13.02.2020) and the third adverse case is in Crime No. 25 of 2022 on the file of Oddanchathram Police Station (occurrence was on 12.01.2022) and therefore time consumed remains unexplained.

13. This Bench is informed that in the ground case final report has been filed within the prescribed time line, according to the learned Additional Public Prosecutor and the same is now on the file of NDPS Court, Madurai in C.C.No.962 of 2023. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail application on its own merits and in accordance with law, more particularly Section 37 of NDPS Act, untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.



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

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.05.2023 bearing reference Detention Order No.37/2023 made by the second respondent is set aside and the detinue Tmt.Murugeswari, female, aged 57 years, wife of Thiru.Murugesan, 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 for Women, Madurai and Sub Jail for Women, Nilakkottai.



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Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector cum District Magistrate,
Theni District,
Theni.
- 3.The Superintendent of Prison,
Special Prison for Women,
Madurai District.
- 4.Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

M.SUNDAR, J.



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