



HCP(MD)No.1130 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.1130 of 2023

J.Joselin Vedhabel

... Petitioner

vs.

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

2. The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.

3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the respondent No.2 in P.D.No.31 of 2023 dated 04.06.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Siva Sankar son of Ponnaiyan Nadar aged about 39 years now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor



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HCP(MD)No.1130 of 2023

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 08.09.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



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.



HCP(MD)No.1130 of 2023

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4. Mr.N.Pragalathan, 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 wife of the detenu assailing the 'preventive detention order dated 04.06.2023 bearing reference in P.D.No.31 of 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 Kottar 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.

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



HCP(MD)No.1130 of 2023

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 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.95 of 2023 on the file of Kottar Police Station, for alleged offences under Sections 341, 294(b), 307 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for 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 08.04.2023 but the impugned preventive detention order has been made only on 04.06.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



HCP(MD)No.1130 of 2023

9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise.

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.

11. To be noted, ***Banik*** case has been respectfully followed by this Court in ***Gomathi Vs.The Principal Secretary to Government and***



HCP(MD)No.1130 of 2023

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 adverse case is in Crime No.96 of 2022 on the file of Nesamony Nagar Police Station for alleged offences under Sections 448, 427, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 [alleged occurrence on 21.08.2022], ground case is Crime No.95 of 2023 on the file of Kottar Police Station, for alleged offences under Sections 341, 294(b), 307 and 302 of IPC [alleged occurrence on 07.04.2023] and therefore time consumed remains unexplained.

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



HCP(MD)No.1130 of 2023

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14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.06.2023 bearing reference in P.D.No. 31 of 2023 made by the second respondent is set aside and the detenu Thiru.Siva Sankar, aged about 39 years, son of Thiru.Ponnaiyan Nadar, 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, Palayamkottai.



HCP(MD)No.1130 of 2023

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
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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HCP(MD)No.1130 of 2023

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

PKN

ORDER MADE IN
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DATED : 30.10.2023