



H.C.P(MD)No.1155 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.12.2023

Coram

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

H.C.P(MD)No.1155 of 2023

Murugesan .. Petitioner/Father of the detenu

VS

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

.. Respondents

Prayer:- 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 second respondent in Cr.M.P.No.13/2023 dated 06.08.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Anbarasu, son of Murugesan, aged about 21 years, now detained as



H.C.P(MD)No.1155 of 2023

'Goonda' at Trichy Central Prison before this Court and set him at liberty forthwith.

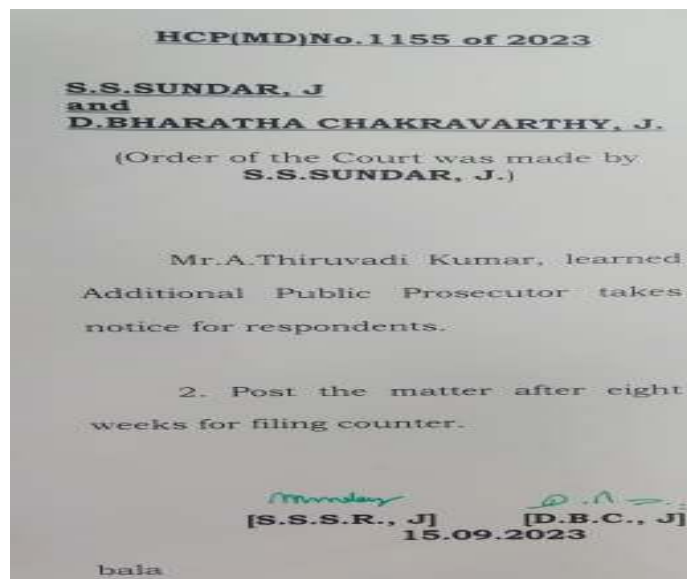
For Petitioner : Mr.R.Alagumani

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 15.09.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:





H.C.P(MD)No.1155 of 2023

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, captioned matter is in the Final Hearing Board.

4.Mr.R.Alagumani, learned counsel 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 father of the detenu assailing a 'preventive detention order dated 06.08.2023 bearing reference Cr.M.P.No.13/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of clarity].

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,



H.C.P(MD)No.1155 of 2023

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 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.147 of 2023 on the file of Udayarpalayam Police Station and an FIR has been registered for 'girl missing' and subsequently altered into Sections 354(A), 366, 376(2) (n), 376(3) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and 5(1) read with Section 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' 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.



H.C.P(MD)No.1155 of 2023

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 detenu was arrested on 28.06.2023 but the impugned preventive detention order has been made only on 06.08.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.

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.

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.



H.C.P(MD)No.1155 of 2023

12.To be noted, the adverse case is in Crime No.31 of 2020 on the file of Thirupannathal Police Station (occurrence was on 05.02.2020) and therefore time consumed remains unexplained.

13.In ***R.Shanthi's*** case [***R.Shanthi Vs. The Additional Chief Secretary to Government of Tamil Nadu and others*** reported in ***2023/MHC/5342*** being Neutral Citation of Madras High Court vide order dated 30.11.2023 in H.C.P(MD)No.518 of 2023], this Court had made certain observations regarding bail in the trial Court in cases where preventive detention orders are quashed. This is captured in paragraph 13 of ***R.Shanthi's*** case and the same reads as follows:

'13. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.80 of 2022 on the file of Nachiyapuram Police Station registered under Sections 5(m), 5(n) r/w 6, 17 and 3(a) r/w 4 of POCSO Act and therefore this solitary case is the sole substratum of the impugned preventive detention order. This solitary case is now Spl.S.C.No.16/2023 on the file of POCSO Court, Sivagangai. Learned Additional Public Prosecutor submits that charge sheet has been filed within the prescribed time on 11.01.2023. This means that the detenu is not entitled to default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity]. This also means that detenu



H.C.P(MD)No.1155 of 2023

WEB COPY

if so advised and if he so desires should file a regular bail application under Section 439 of Cr.PC. If the detenu files a regular bail application under Section 439 Cr.PC before the trial Court, learned trial Judge shall consider the bail application on its own merits and in accordance with law untrammelled / uninfluenced by this order, as this order has been made for the limited purpose of testing the impugned preventive detention order in the habeas legal drill on hand. To put it differently, ie., for adding clarity and specificity, we make it clear that the impugned preventive detention order being set aside cannot by itself become a ground for grant of bail. This further means that learned trial Judge should consider the bail application ignoring / de hors the position that impugned preventive detention order has been set aside vide this order. To add greater clarity, we make it clear that this order cannot be produced in the trial Court in support of the bail application. In any event, the learned trial Court Judge shall consider the bail application in accordance with normal parameters at his discretion taking into account the proviso of POCSO Act. In the light of the submissions made by learned Additional Public Prosecutor we deem it appropriate to say that this principle is not restricted to captioned HCP and the instant order ie., this principle that 'a bail application in a trial Court should be considered on its own merits and in accordance with law de hors an order in a HCP setting aside the preventive detention order qua bail applicant' is a generic principle which will apply across the board ie., to all cases. To put it differently an order in a HCP setting aside a preventive detention order will neither be an impetus nor impede a bail plea.'

14. We make it clear that aforementioned observations in **R. Shanthi's** case would apply in all force to the case on hand.



H.C.P(MD)No.1155 of 2023

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

16.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.08.2023 bearing reference Cr.M.P.No.13/2023 made by the second respondent is set aside and the detenu Thiru.Anbarasu, aged 21 years, son 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.)
18.12.2023

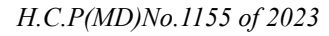
Index : Yes

Neutral Citation : Yes

ps

Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



<https://www.mhc.tn.gov.in/judis>
10/11



WEB COPY



H.C.P(MD)No.1155 of 2023

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

ps

H.C.P(MD)No.1155 of 2023

18.12.2023