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H.C.P(MD)No.1166 of 2023

THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 16.10.2023**

Coram

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

**H.C.P(MD)No.1166 of 2023**

Manoharan

.. Petitioner

VS

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

2.The District Magistrate and District Collector,  
Office of the District Magistrate and District Collector,  
Virudhunagar District.

3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

: Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order of the respondent No.2 in Cr.M.P.No.04/2023 (DRUG OFFENDER), dated 15.04.2023 and quash the same and direct the respondents to produce the person or body of the detenu by name



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Manoharan, son of Arumugam, aged about 25 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Rameshkumar

For Respondents : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

### **ORDER**

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[Order of the Court was made by **M.SUNDAR, J.**]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 15.04.2023 bearing reference Cr.M.P.No.04/2023' [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 and we find that Station House Officer of 'A.Mukkulam Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].



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2. 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 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.

3. There is no adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.19 of 2023 on the file of A.Mukkulam Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25, 27A and 29(1) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' ['NDPS Act' for brevity], which was subsequently altered into Sections 8(c) r/w 20(b)(ii)(C), 25, 27A and 29(1) of NDPS Act and Section 109 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 preventive detention order, it is not necessary to delve into the factual matrix of the case.



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4. Mr.S.Rameshkumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submitted that 'live and proximate link' between the grounds of detention and purpose of detention has snapped as date of remand in the ground case is 18.02.2023 but the impugned preventive detention order has been made only on 15.04.2023.

6. 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.

7. 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



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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.

8. 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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**9.** To be noted, the sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.19 of 2023 on the file of A.Mukkulam Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25, 27A and 29(1) of NDPS Act, which was subsequently altered into Sections 8(c) r/w 20(b)(ii)(C), 25, 27A and 29(1) of NDPS Act and Section 109 of IPC.

**10.** This Bench is informed that in the solitary case, which forms the sole substratum of the impugned preventive detention order, final report has been filed in C.C.No.262 of 2023 before EC Court, Madurai within the prescribed time line. As a sequitur, we are informed that the detenu will have to seek regular bail in solitary case ie., ground case. We are also informed that detenu has been enlarged on bail in solitary ground case. In this scenario, we make it clear that if detenu applies for regular bail in the trial Court, learned trial Judge shall consider the same on its own merits and in accordance with law 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.

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



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12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.04.2023 bearing reference Cr.M.P.No.04/2023 made by the second respondent is set aside and the detenu Thiru.Manoharan, aged 25 years, son of Thiru.Arumugam, 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.)  
16.10.2023

Index : Yes  
Neutral Citation : Yes  
vsm

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

To

- 1.The Principal Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 600 009.
- 2.The District Magistrate and District Collector,  
Office of the District Magistrate and District Collector,  
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- 3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**and**  
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