



H.C.P(MD)No.1162 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **15.11.2023**

Coram

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

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Al Ashik @ Ashik Mohammed

.. 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,
Velunachiar Valagam,
Dindigul District.

3.The Superintendent of Prison,
Central Prison, Thiruchirappalli,
Thiruchirappalli 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 respondent No.2 in Detention Order No.60/2023 dated 28.08.2023 and quash the same and direct the respondents to produce the detenu by name Al Ashik @ Ashik Mohammed, son of Sowkath Ali aged about 29 years, who is detained in Central Prison,



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Tiruchirappalli, before this Court and set him at liberty forthwith.

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For Petitioner : Ms.P.Krishnaveni
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 Coordinate Division Bench made the following order in the Admission Board:

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S.S.SUNDAR, J
and
D.BHARATHA CHAKRAVARTHY, J.

(Order of the Court was made by
S.S.SUNDAR, J.)

Mr.A.Thiruvadi Kumar, learned
Additional Public Prosecutor takes
notice for respondents.

2. Post the matter after eight
weeks for filing counter.

Mundar
[S.S.S.R., J] [D.B.C., J]
15.09.2023

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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. Ms.P.Krishnaveni, learned counsel on record 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 the detenu assailing a 'preventive detention order dated 28.08.2023 bearing Detention Order No. 60/2023' [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 'Dindigul Town North Police Station' 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.

6. Impugned preventive detention order has been made under 'The



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.447 of 2023 on the file of Dindigul Town North Police Station for the alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 120(B), 147, 148 and 302 of IPC. 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.

8. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was surrendered on 21.07.2023 but the impugned preventive detention order has been made only on 28.08.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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9. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public 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.



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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:1162** and a series of similar orders in HCP cases.

12. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.447 of 2023 on the file of Dindigul Town North Police Station, for alleged offence under Section 302 of IPC and subsequently altered into Sections 120(B), 147, 148 and 302 of IPC and therefore this solitary case is the sole substratum of the impugned preventive detention order.

13. Before concluding, we also remind ourselves that preventive



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detention is not a punishment and HCP is a high prerogative writ.

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14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.08.2023 bearing Detention Order No. 60/2023 made by the second respondent is set aside and the detenu Thiru.AI Ashik @ Ashik Mohammed, aged 29 years, son of Sowkath Ali, 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.)
15.11.2023

Index : Yes
Internet: Yes
Neutral Citation : Yes
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
- 1.The Principal Secretary to Government,
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Fort St. George, Chennai – 600 009.
 - 2.The District Magistrate and District Collector,
Velunachiar Valagam,
Dindigul District.
 - 3.The Superintendent of Prison,
Central Prison, Thiruchirappalli,
Thiruchirappalli District.
 - 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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and
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