



HCP(MD)No.1173 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.1173 of 2023

Gowsalya

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... 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 proceedings in P.D.O.No.16/2023 dated 05.09.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Achi Masala Balu @ Balakrishnan son of Elangovan aged about 36 years now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.



WEB COPY



HCP(MD)No.1173 of 2023

For Petitioner : Mr.K.M.Karunakaran

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 20.09.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:

H.C.P.(MD) No. 1173 of 2023

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadi Kumar
learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after six weeks.

[M.S.R., J.] & [M.N.K., J.]

20.09.2023

RA

2. It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.



HCP(MD)No.1173 of 2023

WEB COPY

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

4. Mr.K.M.Karunakaran, 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 mother of the detenu assailing the 'preventive detention order dated 05.09.2023 bearing reference in P.D.O.No.16/2023' [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 Sammattividuthi 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 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 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.91 of 2023 on the file of Sammattividuthi Police Station, for alleged offence under Sections 284, 328 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Section 6(a) r/w 24(1) of Cigarettes and Other Tobacco Products Act, 2003 [hereinafter 'COTP Act' for the sake of brevity and convenience] and Sections 8(c) r/w 20(b)(ii)(B) and 25 of The Narcotic Drugs and Psychotropic Substances Act, 1985, [hereinafter 'NDPS Act' for the sake of brevity and convenience]. 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 26.07.2023 but the impugned preventive detention order has been made only on 05.09.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

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



HCP(MD)No.1173 of 2023

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.

12. To be noted, the adverse case is in Crime No.77 of 2023 on the file of Alangudi Police Station for alleged offences under Sections 8(c)



HCP(MD)No.1173 of 2023

r/w 20(b)(ii)(B) of NDPS Act [alleged occurrence on 07.04.2023], ground case is Crime No.91 of 2023 on the file of Sammattividuthi Police Station, for alleged offence under Sections 284, 328 of IPC read with 6(a) r/w 24(1) of COTP Act and Sections 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act [alleged occurrence on 26.07.2023] 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.

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.09.2023 bearing reference in P.D.O.No.16/2023 made by the second respondent is set aside and the detenu Thiru.Achi Masala Balu @ Balakrishnan, aged about 36 years, son of Thiru.Elangovan, 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
PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli. All concerned to act on this order



HCP(MD)No.1173 of 2023

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.

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
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.



WEB COPY



HCP(MD)No.1173 of 2023

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

PKN

ORDER MADE IN
HCP(MD)No.1173 of 2023

DATED : 07.11.2023