



H.C.P(MD)No.1194 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2023**

Coram

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

H.C.P(MD)No.1194 of 2023

Vinothkumar @ Oosu

.. Petitioner

VS

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

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

.. 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 No. 71/BCDFGISSSV/2023 dated 03.08.2023 and quash the same and direct the respondents to produce the detenu by name Vinothkumar @ Oosu, son of Saivam aged about 19 years, who is now detained as “Goonda” at Madurai Central Prison, before this Court and set him at liberty forthwith.



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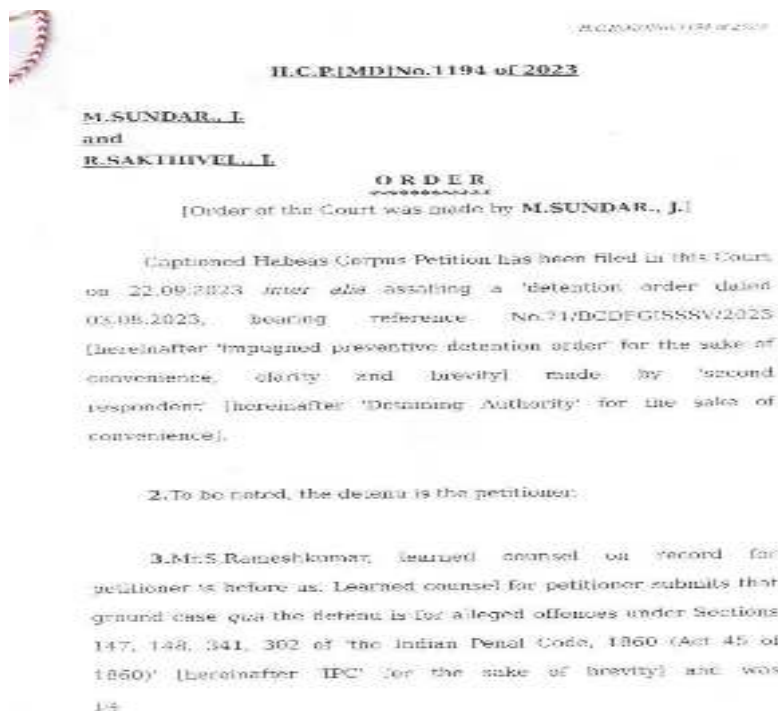
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For Petitioner : Mr.S.Rameshkumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity] was listed in the Admission Board before us on 04.10.2023 and we made the following order:





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subsequently altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 of IPC in Crime No.219 of 2023 on the file of Madurai B5 South Gate Police Station.

4.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 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].

5.The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 17.05.2023 but the impugned preventive detention order has been passed on 03.08.2023.

6.*Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four [4] weeks.

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7.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S., J.] & [R.S.V., J.]
04.10.2023

MR

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and we would plunge into the legal drill of testing the impugned preventive detention order in the habeas legal drill on hand. Suffice to say that aforementioned Admission Board order dated 04.10.2023 shall now be read as an integral part and parcel of this final order. It means that the short forms, short references and



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abbreviations used in the Admission Board order will continue to be used in the instant final order also.

3. 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.

4. Captioned HCP has been filed by the detenu assailing a 'preventive detention order dated 03.08.2023 bearing No. 71/BCDFGISSSV/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 'B5 South Gate 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.

5. 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, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video



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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.

6. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.219 of 2023 on the file of B5 South Gate for the alleged offences under Sections 147, 148, 341, 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, 341 and 302 of IPC and again altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 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.

7. 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 17.05.2023 but the impugned preventive detention order has been made only on 03.08.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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8. 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.

9. 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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10. 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.

11. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.219 of 2023 on the file of B5 South Gate Police Station, for alleged offences under Sections 147, 148, 341, 302 of IPC and subsequently altered into Sections 120-B, 147, 148, 341 and 302 of IPC and again altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 of IPC. and therefore this solitary case is the sole substratum of the impugned preventive detention order.



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

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.08.2023 bearing No. 71/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Vinothkumar @ Oosu, aged 19 years, son of Saivam, 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, Madurai.



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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai – 600 009.
 - 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
 - 3.The Superintendent of Prison,
Central Prison, Madurai.
 - 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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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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