



HCP(MD)No.1218 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.1218 of 2023

Imaculate Sowmi

... Petitioner

vs.

1. The Principal Secretary to Government,
The 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
Dindigul District, Dindigul.

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

... 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 Detention Order No.58/2023 dated 20.08.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Alex @ Alexraj son of Amulraj aged about 26 years now detained at Central Prison, Madurai before this Court and set him at liberty forthwith.



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HCP(MD)No.1218 of 2023

For Petitioner : Mr.S.Ramesh Kumar

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 09.10.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:

H.C.P.(MD)No.1218 of 2023

S.M.SUBRAMANIAM, J.
AND
V.LAKSHMINARAYANAN, J.

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

Admit.

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

3. Post the matter after four
weeks.


[S.M.S.J.] & [V.L.N.J.]
09.10.2023

SJ



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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. Mr.S.Ramesh Kumar, 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 wife of the detenu assailing the 'preventive detention order dated 20.08.2023 bearing reference in Detention Order No.58/2023' [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 Vendasandur 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.



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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 'Goonda' within the meaning of Section 2(f) 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.155 of 2023 on the file of Vedasandur Police Station, for alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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 23.06.2023 but the impugned preventive detention order has been made only on 20.08.2023 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, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be



HCP(MD)No.1218 of 2023

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.110 of 2023 on the file of Dindigul Town South Police Station for alleged offences under Sections 147, 148, 452, 294(b), 323, 324 and 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 [alleged



HCP(MD)No.1218 of 2023

occurrence on 28.05.2023], ground case is Crime No.155 of 2023 on the file of Vendasandur Police Station, for alleged offence under Section 302 of IPC [alleged occurrence on 20.06.2023] 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 20.08.2023 bearing reference in Detention Order No.58/2023 made by the second respondent is set aside and the detenu Thiru.Alex @ Alexraj, aged about 26 years, son of Thiru.Amulraj, 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.



HCP(MD)No.1218 of 2023

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2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector
Dindigul District, Dindigul.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai 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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HCP(MD)No.1218 of 2023

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

PKN

ORDER MADE IN
HCP(MD)No.1218 of 2023

DATED : 07.11.2023