



HCP(MD)No.1212 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD) No.1212 of 2023

Muthammal

: Petitioner

Vs.

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District at Nagercoil.
- 3.The Superintendent,
Central Prison, Palayamkottai.
- 4.The Inspector of Police,
All Women Police Station,
Marthandam, Kanyakumari District.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Detention Order P.D.No.35/2023 dated 17.07.2023 and quash the same and direct the respondents to produce the Detenu namely Parameswaran S/o.Kochu Kunjan Male aged about 39 years, who is now confined at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.S.Sivakumar

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:

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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.Sivakumar, learned Counsel on record for HCP 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 mother of the detenu assailing a 'preventive detention order dated 17.07.2023 bearing reference P.D.No.35/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, the fourth respondent 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 Tamil Nadu Prevention of Dangerous Activities of Bootleggers,



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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 'Sexual Offender' within the meaning of Section 2(ggg) 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 *qua* the detenu is for the offence relating to 'Girl Missing' and subsequently altered into Section 366(A) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and again altered into Sections 366-A, 376(3) of IPC and Sections 5(l), 6 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity] in Crime No.12 of 2023 on the file of All Women Police Station, Marthandam. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.



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8. In the support affidavit *qua* captioned HCP several grounds have been raised but learned Counsel for petitioner predicated his campaign against the impugned Preventive Detention Order on the point that the detenu was arrested on 31.05.2023 but the impugned preventive detention order has been made only on 17.07.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

9. 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.

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



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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.

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.



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12. To be noted, the adverse case is in Crime No.11 of 2021 on the file of Kollencode Police Station is for the offence relating to 'Girl Missing' and subsequently altered into Section 366-A of IPC and again altered into Sections 366 of IPC and Sections 5(l), 6 of POCSO Act [alleged occurrence on 11.01.2021], ground case is Crime No.12 of 2023 on the file of Marthandam All Women Police Station, for alleged offence relating to 'Girl Missing' and subsequently altered into Section 366-A of IPC and again altered into Sections 366-A and 376(3) of IPC and Sections 5(l), 6 of POCSO Act [alleged occurrence on 15.05.2023] and therefore time consumed remains unexplained.

13. This Bench is informed by the learned Additional Public Prosecutor on instructions that in the ground case final report has been filed within the prescribed time line and the same is now on the file of Special Court for the Exclusive Trail of POCSO Act Cases, Nagercoil. To be precise, charge sheet is dated 13.07.2023 and the same has been filed on the same day. As it is submitted that charge sheet has been filed within the prescribed time the detenu will have to move for regular bail. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail



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application 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.

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

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.07.2023 bearing reference P.D.No.35/2023 made by the second respondent is set aside and the detenu Thiru.Parameswaran, male, aged 39 years, son of Kochu Kunjan, 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.]

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Index : Yes

Internet : Yes

Neutral Citation : Yes

PKN

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

To

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District at Nagercoil.
- 3.The Superintendent,
Central Prison, Palayamkottai.
- 4.The Inspector of Police,
All Women Police Station,
Marthandam, Kanyakumari 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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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

PKN

ORDER MADE IN
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09.11.2023