



HCP(MD)No.1241 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

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

HCP(MD)No.1241 of 2023

Dhanalakshmi

... Petitioner

vs.

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

2. The District Collector cum District Magistrate,
Dindigul District, Dindigul.

3. The Superintendent,
Central Prison, Madurai.

4. The Inspector of Police,
Thadikombu Police Station,
Dindigul 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.50/2023 dated 25.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name



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MLJ 2023(2023) 1241 of 2023
[sake of brevity] in Crime No.304 of 2023 on the file of Thudicoambu
Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detainee is a 'Goonda' under Section 2(5) 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 Tamil translation copies of some of the pages in the ground booklet have not been furnished despite it was sought by the petitioner by way of representation.

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 State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.] [R.S.V.J.]
13.10.2023

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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 13.10.2023 shall now be read as an integral



part and parcel of this final order. It means that the short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also.

3. Mr.AK.Azagarsami, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4. 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.204 of 2023 on the file of Thadicombu Police Station, for alleged offences under Sections 452, 302 and 307 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.

5. 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 25.07.2023 resulting in live and proximate link between grounds and purpose of detention getting



snapped.

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6. 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.

7. 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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8. 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.

9. To be noted, the adverse case is in Crime No.558 of 2021 on the file of Thadicombu Police Station for alleged offences under Sections 294(b) and 324 of IPC [alleged occurrence on 18.06.2021], ground case is Crime No.204 of 2023 on the file of Thadicombu Police Station, for alleged offences under Sections 452, 302 and 307 of IPC [alleged occurrence on 22.06.2023] and therefore time consumed remains unexplained.



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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.07.2023 bearing reference in Detention Order No.50/2023 made by the second respondent is set aside and the detenu Thiru.Sathiyapriyan, aged about 22 years, son of Thiru.Nagarajan, 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
Neutral Citation : Yes
PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified 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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3. The Superintendent,
Central Prison, Madurai.
4. The Inspector of Police,
Thadikombu Police Station,
Dindigul District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. 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
HCP(MD)No.1241 of 2023

DATED : 15.11.2023