



HCP(MD)No.1255 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

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

HCP(MD)No.1255 of 2023
and Crl.M.P.(MD) No.14663 of 2023

Pushpavalli

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
2. The City Police Commissioner,
Tiruchirappalli City.
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 records relating to the detention order passed by the second respondent in Detention Order passed in C.No.185/detention/C.P.O/T.C/2022 dated 31.12.2022 and quash the same as illegal and also direct the respondents to produce the detenu namely Sandi @ Sakthivel S/o. Elangovan, Male, aged 26 years who is detained at Central Prison, Tiruchirappalli before this Court and set him at liberty.



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For Petitioner : Mr.J.Madhu

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] and captioned 'Criminal Miscellaneous Petition' [hereinafter 'CrI.MP' for the sake of brevity] were listed in the Admission Board on 17.10.2023, this Bench made the following order in the Admission Board:





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3. 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 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.

4. Mr.J.Madhu, learned counsel for HCP petitioner in the Admission Board submitted that detenu was surrendered on 12.11.2022 in the ground case but the impugned preventive detention order has been made only on 31.12.2022 and therefore, live and proximate link between the grounds of detention and purpose of detention has snapped. Learned counsel for HCP petitioner also pointed out that there is only one adverse case even according to the grounds of impugned preventive detention order and that is of the year 2021 and the date of occurrence is 19.09.2021 even according to the grounds of impugned preventive detention order.

5. *Prima facie* case made out for admission. Admit. Issue *Rule nisi*.



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6. Considering that the impugned preventive detention order has been made on 31.12.2022 and also taking into account the fact that a 'Criminal Miscellaneous Petitioner' (Crd MP' for the sake of brevity) has been moved seeking permission to be present for registration of a document [temporary release], we exercise our powers under the second limb of sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' (hereinafter 'said Rules') [We have already referred to Hon'ble Rule committee the question of shorter returnable rule nisi notice across the Board in HCP matters] and order Rule nisi notice returnable by 30.03.2023. Notice in Crd MP no.

7. Mr.A.Thiruvadikumar, learned State Additional Public Prosecutor accepts notice for all the respondents.

8. List in the Final Hearing Board on 30.10.2023

[M.S.J.] & [R.S.V.J.]
17.10.2023

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2. The aforementioned admission order captures all essentials that are imperative for appreciating this final order and therefore, we are not embarking upon the exercise of setting out facts and other details again. Suffice to say that the aforementioned Admission Board order dated 17.10.2023 shall be read as an integral part and parcel of this final order. This also means that the short forms, abbreviations and short references used in the Admission Board order will be used in the instant final order also.

3. Today Mr.J.Madhu, learned counsel for HCP petitioner advertent to paragraph 4 of the Admission Board order elaborated on the live and proximate link point being snapped. Learned counsel pointed out that the detenu surrendered on 12.11.2022 but the impugned preventive detention order has been made only on 31.12.2022. In support of his argument, learned counsel relied on oft-quoted **Banik** case i.e., **[Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333]**. To be noted, in **Banik's** case, **Ganesh Malji's** case **[Ganeshmalji v. State of Tamil Nadu, (1979) 1 SCC 465]** has been reiterated by Hon'ble Supreme Court.



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4. In response to the aforementioned argument, learned Prosecutor submitted that there is one adverse case qua the detenu.

5. We carefully considered the rival submissions.

6. The case filed before us brings to light that the adverse case i.e., Cr.No.983 of 2021 for alleged offence under Section 392 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] is of the year 2021 and the date of occurrence is 19.09.2021. This means that the adverse case has clearly become stale and in any event, this one adverse case does not come to the aid of the learned Prosecutor as that by itself neither explains the time consumed between the date of surrender and the date of preventive detention order nor makes the time consumed reasonably. This means that the live and proximate link between grounds of detention and purpose of detention being snapped point is sustained. This further means that the impugned preventive detention order has become vulnerable, vitiated and liable for being dislodged in the habeas legal drill on hand.



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7. Before writing the operative portion of the main HCP order, as regards the captioned Crl.MP, as would be evident from paragraph 6 of the Admission Board order, the same has been moved seeking permission for the detenu to be present for registration of a document, in other words, captioned Crl.MP is for temporary release for this purpose. In this regard, this Court is informed without any dispute or contestation that if the impugned preventive detention order is dislodged, the detenu will be free as he is not required in any other case. Therefore, we deem it appropriate to dispose of the captioned Crl.MP as closed without expressing any view or opinion on the merits of the plea thereat.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.12.2022 bearing reference in C.No. 185/Detention/C.P.O/TC/2022 made by the second respondent is set aside and the detenu Thiru.Sandi @ Sakthivel, aged about 26 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.)
30.10.2023

Index : Yes
Neutral Citation : Yes
PKN



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

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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
2. The City Police Commissioner,
Tiruchirappalli City.
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.



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

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ORDER MADE IN
HCP(MD)No.1255 of 2023

DATED : 30.10.2023