



H.C.P(MD)No.1230 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.11.2023

Coram

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

H.C.P(MD)No.1230 of 2023

S.Pathirakali

.. Petitioner/Mother of the detenue

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, George Fort,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Madurai 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 records on the file of the second respondent in M.H.S.Confdl No.59/2023 dated 14.06.2023 and set aside the order of detention passed therein, direct the



H.C.P(MD)No.1230 of 2023

respondents to produce the detenu by name Vembu Sudalai, male, aged 22 years, S/o.Selvaraj (the detenu) before this Court, now detained at Central Prison, Madurai and set aside the order of detention passed therein and set him at liberty forthwith.

For Petitioner : Mr.J.William Christopher
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] was listed before us in the Admission Board on 06.11.2023 and a scanned reproduction of the same is as follows:



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H.C.P(MD)No.1230 of 2023

H.C.P(MD)No.1230 of 2023

D.C.P./MD/No.1230 of 2023

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

ORDER

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

Adverting to earlier proceedings dated 18.10.2023, today Mr.S.Jeyakumar, learned counsel for petitioner made submissions in the Admission Board.

2. Captioned Habeas Corpus Petition has been filed in this Court on 05.10.2023 *inter alia* assailing a 'detention order dated 14.06.2023, bearing M.H.S Confil No.59 of 2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].

3. To be noted, mother of the detainee is the petitioner.



H.C.P(MD)No.1230 of 2023

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H.C.P(MD)No.1230 of 2023

4. Learned counsel for petitioner submits that ground case *qna* the detenat is Crime No 104 of 2023 on the file of Ambasaram Police Station registered under Sections 294(b), 302 and 506(ii) of the Indian Penal Code, 1860 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

5. The aforementioned impugned preventive detention order has been made on the premise that the detenat 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].

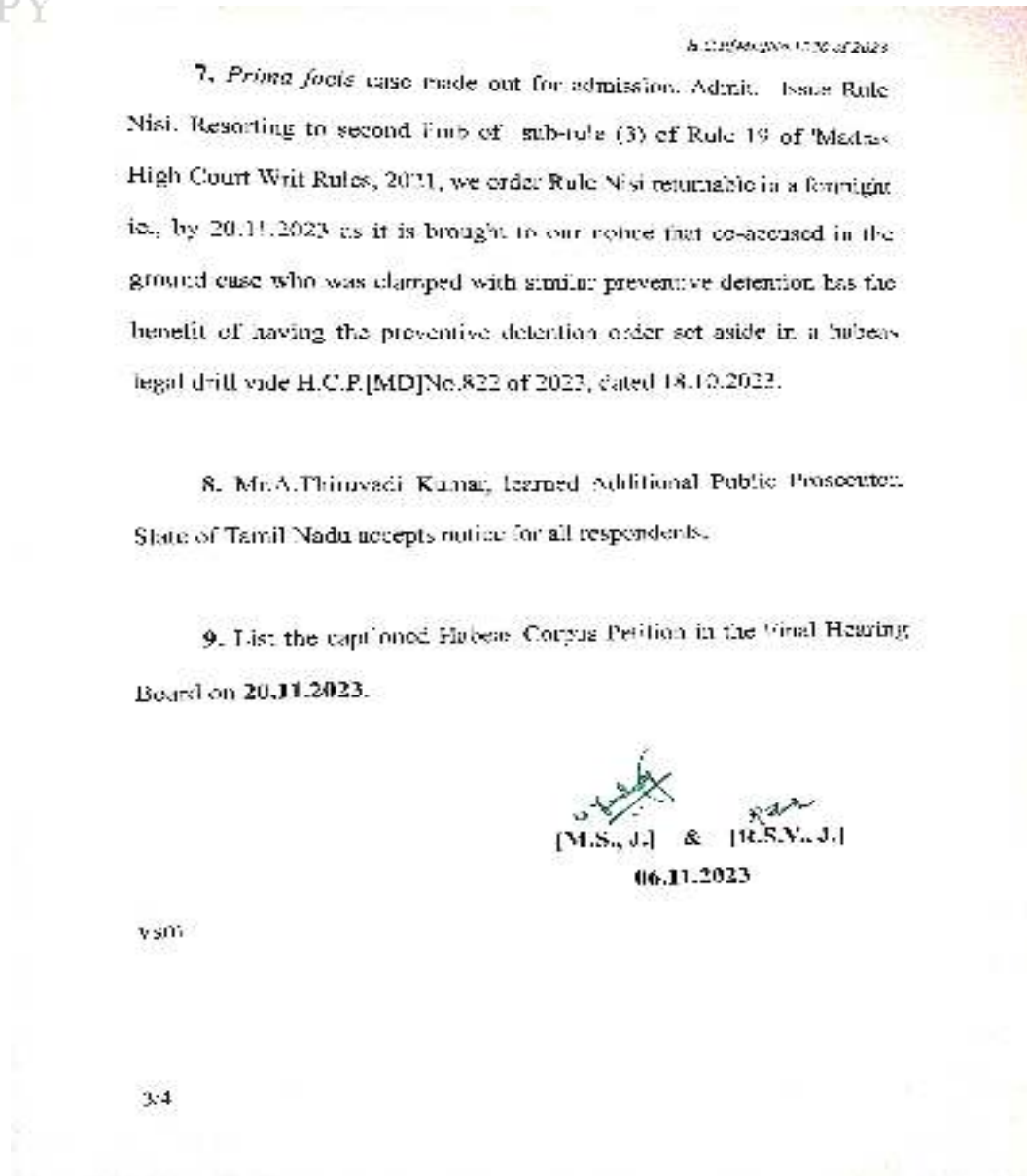
6. The impugned preventive detention order has been assailed *inter alia* on the ground that a similar case bail order furnished in the grounds booklet furnished to the detenat is not similar in nature.



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H.C.P(MD)No.1230 of 2023



2.The aforementioned 06.11.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board



H.C.P(MD)No.1230 of 2023

order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.104 of 2023 on the file of Ambasamudram Police Station for alleged offences under Sections 294(b), 302 and 506(ii) of IPC and Section 4 of Tamil Prohibition of Harassment of Women Act, 2002. 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.

4. Mr. J. William Christopher, learned counsel on record for petitioner and Mr. A. Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submits that 'live and proximate link' between grounds of detention and purpose of detention



H.C.P(MD)No.1230 of 2023

has snapped as date of arrest in the ground case is 15.05.2023 but the impugned preventive detention order has been made only on 14.06.2023.

6.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.

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.

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 sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.104 of 2023 on the file of Ambasamudram Police Station for alleged offences under



H.C.P(MD)No.1230 of 2023

Sections 294(b), 302 and 506(ii) of IPC and Section 4 of Tamil
Prohibition of Harassment of Women Act, 2002.

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 14.06.2023 bearing reference M.H.S.Confdl.No.59/2023 made by the second respondent is set aside and the detenu Thiru.Vembu Sudalai, aged 22 years, son of Thiru.Selvaraj, 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.)
20.11.2023

Index : Yes/No

Neutral Citation : Yes/No

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Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai.

(ii) 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.



H.C.P(MD)No.1230 of 2023

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- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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H.C.P(MD)No.1230 of 2023

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H.C.P(MD)No.1230 of 2023

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