



H.C.P(MD)No.1318 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 04.12.2023

Coram

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

H.C.P(MD)No.1318 of 2023

Pandiammal .. Petitioner/Mother of the detenue

VS

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Madurai,
Madurai District.

3.The Superintendent of Prison,
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 in pursuant to the proceedings of second respondent in Detention Order No.70/BCDFGISSSV/2023 dated 31.07.2023 quash the same and consequently direct the respondents to produce the detenu, namely



H.C.P(MD)No.1318 of 2023

Thatchinamoorthi @ Thatchina, S/o.Muniyasamy, aged 20 years who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.P.Praveenkumar
For Respondents : Mr.S.Ravi
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 convenience and clarity] came up for admission on 02.11.2023, this Bench made an order and a scanned reproduction of the same is as follows:



H.C.P(MD)No.1318 of 2023

WEB COPY

H.C.P(MD)No.1318 of 2023

H.C.P.[MD]No.1318 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 09.10.2023 *inter alia* assailing a 'detention order dated 31.07.2023, bearing No.70/BCDFGLSSSV/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].

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

3. Mr.P.Praveenkumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detainee is Crime No.219 of 2023 on the file of B5 South Gate Police Station registered under Sections 147, 148, 341 and 302 of the Indian



H.C.P(MD)No.1318 of 2023

WEB COPY

H.C.P(MD)No.1318 of 2023

Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] which was subsequently altered into Sections 120-B, 147, 148, 341 and 302 of IPC and again altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 of IPC

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu 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].

5. 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 detenu is not similar in nature.



H.C.P(MD)No.1318 of 2023

H.C.P(MD)No.1318 of 2023

WEB COPY

6. *Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four [4] weeks.

7. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, State of Tamil Nadu, accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S., J.] & [R.S.V., J.]
02.11.2023

V3C1

2.The aforementioned 02.11.2023 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 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.



H.C.P(MD)No.1318 of 2023

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.219 of 2023 on the file of B5 South Gate Police Station for alleged offences under Sections 147, 148, 341 and 302 of I.P.C which was subsequently altered into Sections 120-B, 147, 148, 341 and 302 of I.P.C and again altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 of I.P.C. 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.P.Praveenkumar, learned counsel on record for petitioner and Mr.S.Ravi, 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 has snapped as date of arrest in the ground case is 17.05.2023 but the impugned preventive detention order has been made only on 31.07.2023.



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.



H.C.P(MD)No.1318 of 2023

WEB COPY

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.219 of 2023 on the file of B5 South Gate Police Station for alleged offences under Sections 147, 148, 341 and 302 of I.P.C which was subsequently altered into Sections 120-B, 147, 148, 341 and 302 of I.P.C and again altered into Sections 120-B, 147, 148, 341, 342, 302 and 212 of I.P.C.



H.C.P(MD)No.1318 of 2023

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 31.07.2023 bearing reference No.70/BCDFGIISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Thatchinamoorthi @ Thatchina, aged 20 years, son of Thiru.Muniyasamy, 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.)
04.12.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

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.1318 of 2023

WEB COPY

- To
- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
 - 2.The Commissioner of Police,
Madurai,
Madurai District.
 - 3.The Superintendent of Prison,
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.



WEB COPY



H.C.P(MD)No.1318 of 2023

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

ps

H.C.P(MD)No.1318 of 2023

04.12.2023