



HCP(MD)No.1242 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM :

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

HCP(MD)No.1242 of 2023

Siva @ Anjan Siva

... Petitioner

vs.

1. State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai-9.

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

3. The Superintendent,
Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for records pertaining to the proceedings of the 2nd respondent made in his proceedings in No.56/BCDFGISSSV/2023 dated 10.07.2023 and quash the same and set the petitioner namely, "Siva @ Anjan Siva, S/o.Murugan, aged about 21 years" at liberty from Central Prison, Madurai ".



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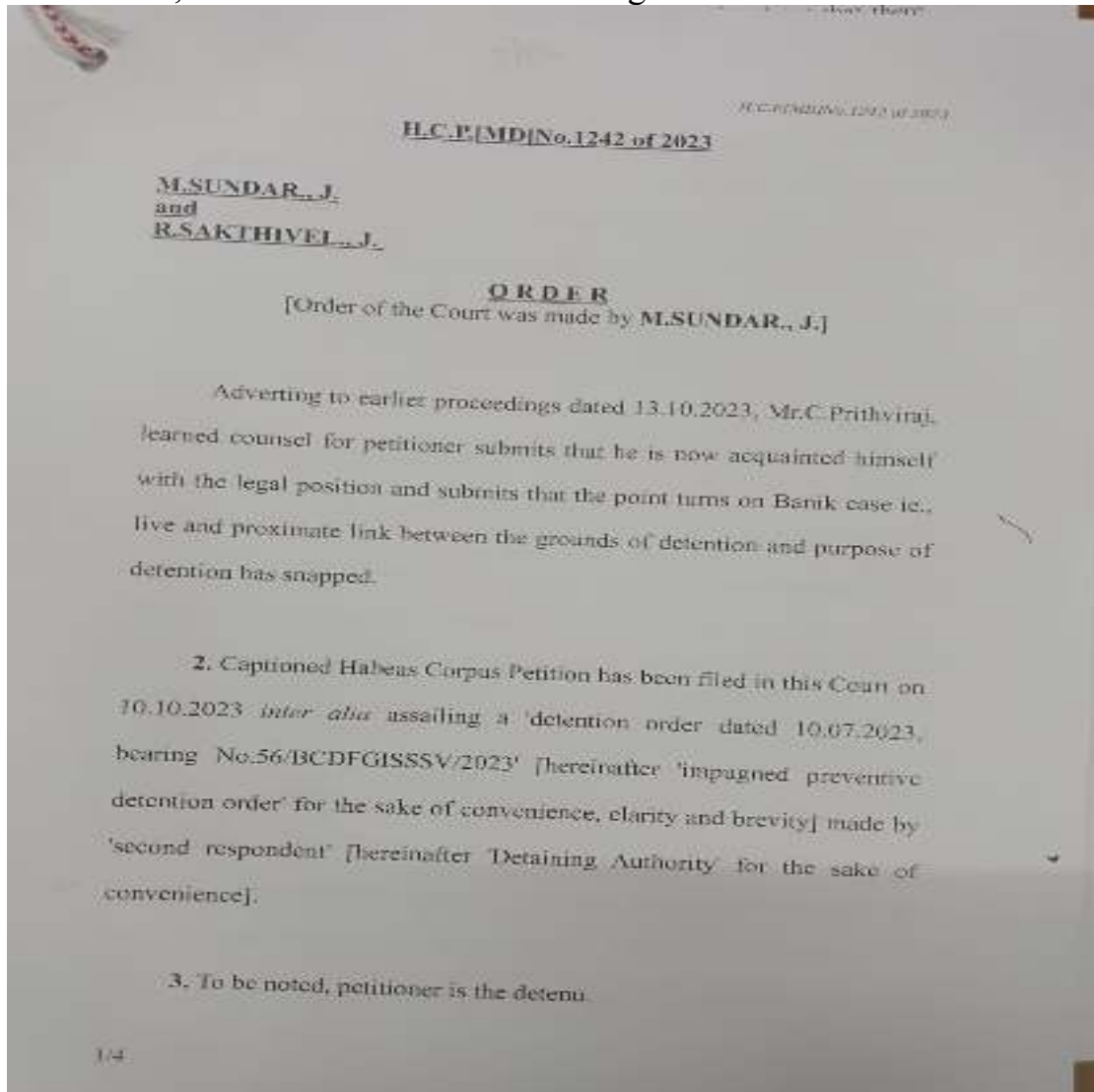
HCP(MD)No.1242 of 2023

For Petitioner : Mr.C.Karthikeya
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 03.11.2023, this Bench made the following order:





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4. Learned counsel for petitioner submits that ground case *qua* the detenu is Crime No.314 of 2023 on the file of C1 Thideer Nagar Police Station under Section 302 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] which was subsequently altered into Sections 302, 149, 342, 294(b), 323 IPC and Section 83(ii) Juvenile Justice (Care and Protection of Children) Act, 2015.

5. 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].

6. The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was ~~was~~ surrendered on 27.04.2023 but the impugned preventive detention order has been passed on 10.07.2023.



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7. Learned counsel for HCP petitioner also pointed out that there are three adverse cases even according to the grounds of impugned preventive detention order and that are of the years 2020, 2021 and 2022 respectively and the date of occurrence are 04.10.2020, 28.03.2021 and 17.07.2022 respectively even according to the grounds of impugned preventive detention order.

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

9. 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.]
03.11.2023

vsm

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2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral



part and parcel of this final order. This also means that short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also for the sake of brevity, convenience and clarity.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.314 of 2023 on the file of C1 Thideer Nagar Police Station registered for alleged offence under Section 302 of IPC and subsequently altered into Sections 302, 149, 342, 294(b) and 323 of IPC and Section 83(ii) of Juvenile Justice (Care and Protection of Children) Act, 2015 [hereinafter 'JJ Act' 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.

4. Today, Mr.C.Karthikeya, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.



5. In the final hearing board, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the point that the detenu surrendered before the Judicial Magistrate Court, Nilakottai, on 27.04.2023 but the impugned preventive detention order has been made only on 10.07.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

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,



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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 first adverse case is in Crime No.853 of 2020 on the file of C1 Thideer Nagar Police Station for alleged offences



under Sections 147, 148, 294(b), 506(ii) of IPC and Section 25(1-A) of Arms Act, 1959 and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, [hereinafter 'TNPPDL Act' for brevity] and subsequently altered into Sections 147, 148, 294(b), 506(ii) of IPC and Section 25(1-A) of Arms Act, 1959 and Section 3(1) of TNPPDL Act and Section 83(ii) of JJ Act [alleged occurrence on 05.10.2020], second adverse case is Crime No.94 of 2021 on the file of C1 Thideer Nagar Police Station for alleged offences under Sections 147, 148, 294(b), 324, 307 and 506(ii) of IPC and subsequently altered into Sections 147, 148, 294(b), 324, 307 and 506(ii) of IPC r/w Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 [hereinafter 'SC and ST Act' for brevity] and again altered into Sections 147, 148, 149, 294(b), 342, 326, 307 and 506(ii) of IPC r/w Section 34 IPC and Section 3(2)(v) of SC and ST Act [alleged occurrence on 28.03.2021], third adverse case is Crime No.488 of 2022 on the file of C5 Karimedu Police Station for alleged offences under Section 399 of IPC [alleged occurrence on 17.07.2022], ground case is Crime No.314 of 2023 on the file of C1 Thideer Nagar Police Station registered for alleged offence under Section 302 of IPC and subsequently altered into Sections 302, 149, 342, 294(b) and 323 of IPC and Section 83(ii) of JJ Act



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[alleged occurrence on 26.04.2023] and therefore time consumed remains unexplained.

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 10.07.2023 bearing reference No. 56/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Siva @ Anjan Siva, aged 21 years, son of Thiru.Murugan, 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.)
11.12.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

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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To

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1. The Principal Secretary to Government,
State of Tamil Nadu,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai-9.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent,
Central Prison,
Madurai.
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
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DATED : 11.12.2023