



HCP(MD)No.1251 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.1251 of 2023

Karthick @ Mental Karthick

... 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.57/BCDFGISSSV/2023 dated 10.07.2023 and quash the same and set the petitioner by name, "Karthick @ Mental Karthick, S/o.Muthupandi, aged about 25 years" at liberty from Central Prison, Madurai ".



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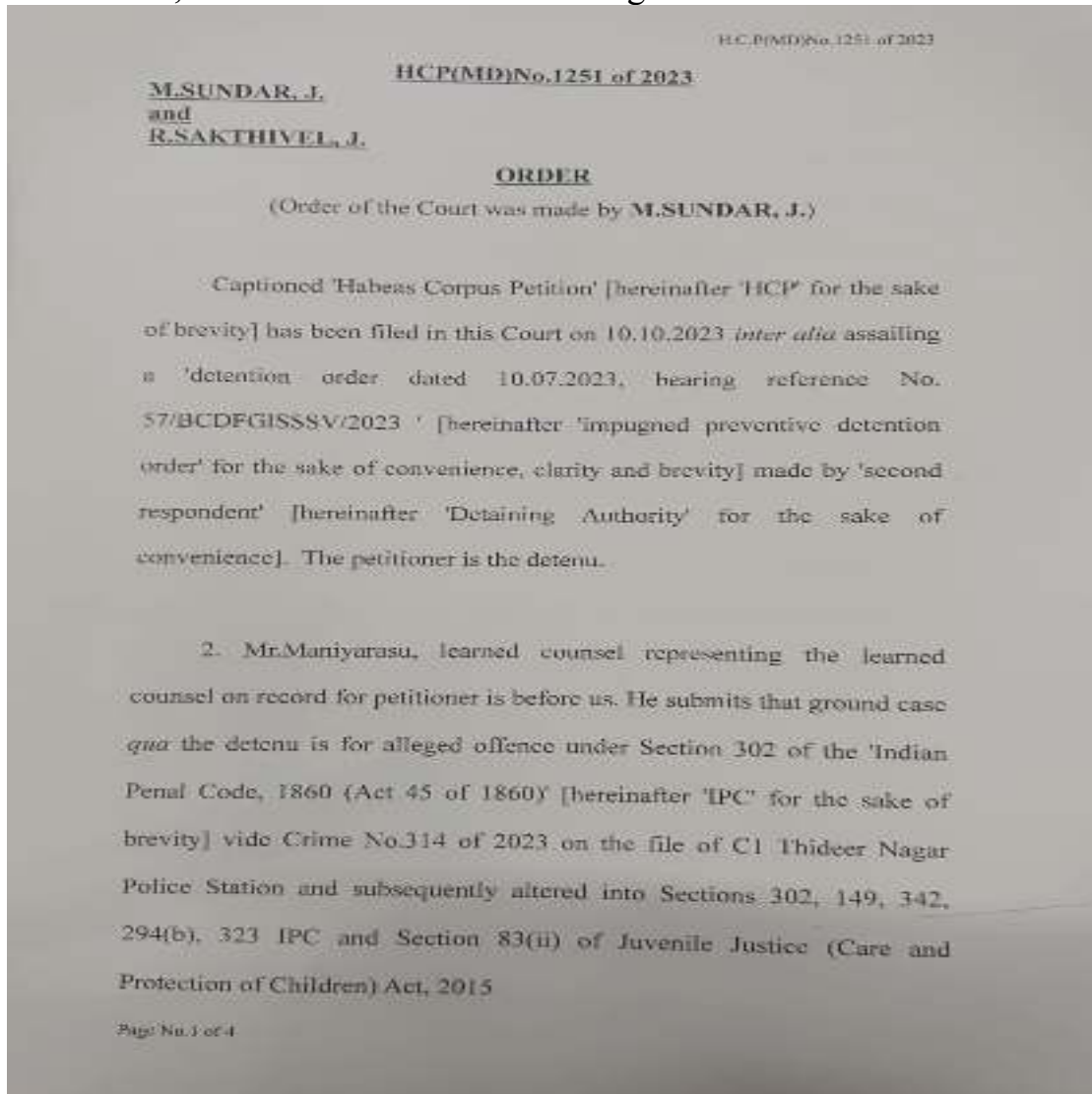
HCP(MD)No.1251 of 2023

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 06.11.2023, this Bench made the following order:





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3. 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].

4. Adverting to earlier proceedings, learned counsel submits that there cannot be a delay in terms of any numerical expression. Learned counsel further submits that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as 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.

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

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6. 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.]
06.11.2023

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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 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.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.



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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, 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**



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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.116 of 2022 on the file of C1 Thideer Nagar Police Station for alleged offences under Sections 294(b), 323, 324, 307 and 506(ii) IPC and subsequently altered into Sections 294(b), 323, 324, 307, 506(ii) and 34 IPC [alleged occurrence on 16.03.2022], 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 [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. 57/BCDFGISSSV/2023 made by the second respondent is set aside and



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the detenu Thiru.Karthick @ Mental Karthick, aged 25 years, son of Thiru.Muthupandi, 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

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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.

To

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.



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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