



H.C.P(MD)No.1258 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**

H.C.P(MD)No.1258 of 2023

Gnanasundari

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the respondent No.2 in order in Detention Order No.15/BCDFGISSSV/2023 dated 14.03.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Kishore Daniel son of Vijayaraj aged about 20 years, now confining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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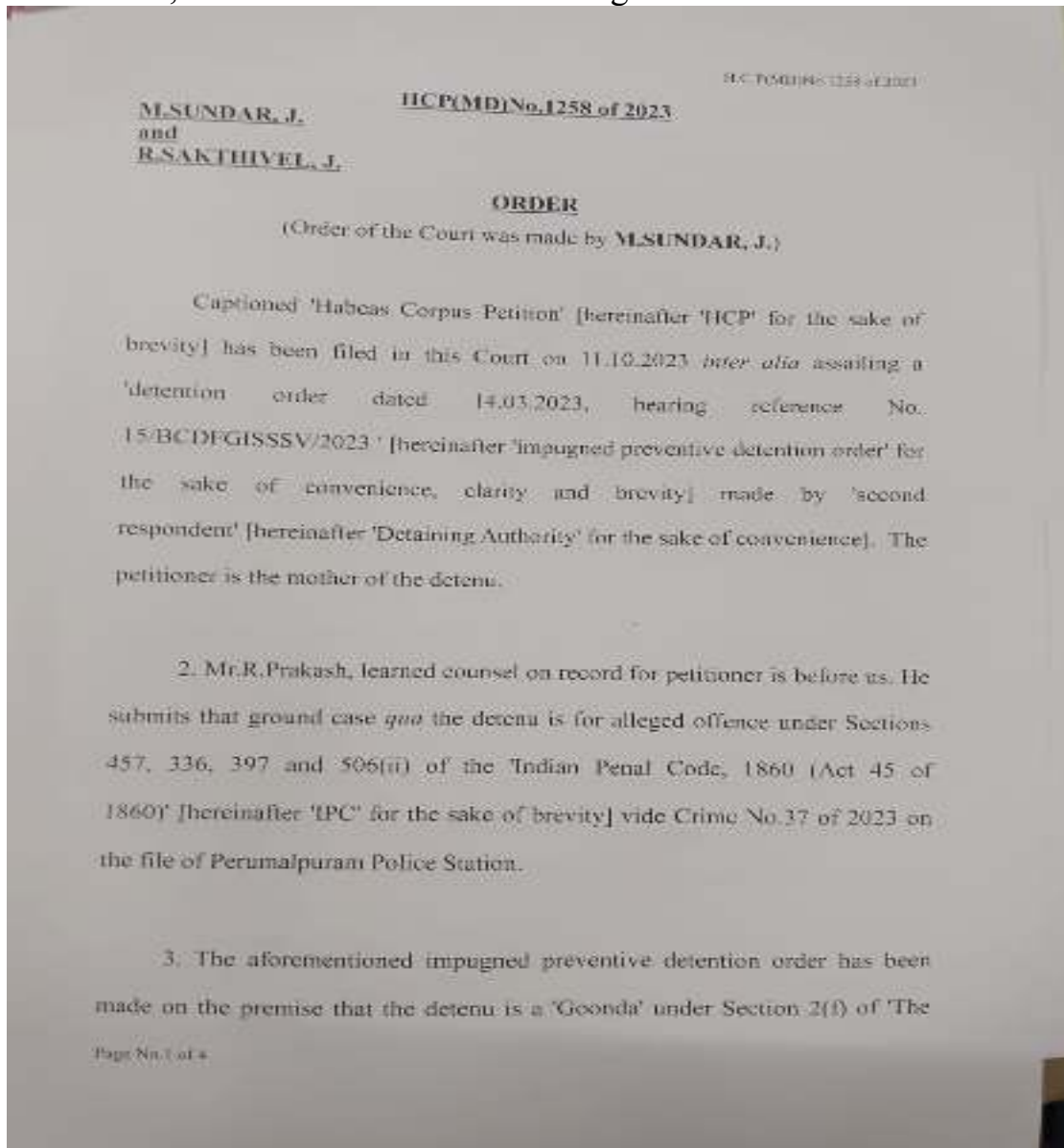
For Petitioner : Mr.R.Prakash
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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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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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 subjective satisfaction arrived at by the detaining authority is impaired as the 'live and proximate link between the grounds of detention and purpose of detention' has snapped since the detenu was arrested on 26.01.2023 but the impugned preventive detention order has been made only on 14.03.2023.

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

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.37 of 2023 on the file of Perumalpuram Police Station registered for alleged offences under Sections 457, 336, 397 and 506(ii) IPC. 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.R.Prakash, 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 was arrested on 26.01.2023 but the impugned preventive detention order has been made only on



14.03.2023 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 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.20 of 2020 on the file of Kanyakumari District, Rajakkamangalam Police Station for alleged offences under Section 394 IPC [alleged occurrence on 24.01.2023], ground case is Crime No.37 of 2023 on the file of Perumalpuram Police Station registered for alleged offences under Sections 457, 336, 397 and 506(ii) IPC [alleged occurrence on 25.01.2023] and therefore time consumed remains unexplained.



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10. There is one adverse case and one ground case. The dates of occurrence in the adverse case and the ground case are 24.01.2023 and 25.01.2023. The detenu was arrested in the adverse case on 26.01.2023. Thereafter, when the detenu remains incarcerated having been arrested in the adverse case, there was a formal arrest in the ground case on 07.02.2023.

11. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.03.2023 bearing reference No. 15/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Kishore Daniel, aged 20 years, son of Thiru.Vijayaraj, 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



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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. 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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli.

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

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