



HCP(MD)No.1250 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.11.2023

CORAM :

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

HCP(MD)No.1250 of 2023

Sathish @ Nagaraj @ Ponds

... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

3. The Superintendent of Prison,
Central Prison,
Madurai.

... 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 passed in Detention Order No. 03/2023 dated 04.02.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Sathish @ Nagaraj @ Ponds, aged about 32 years, S/o. Nataraj, now detained at the Central Prison, Madurai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan
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 convenience and clarity) was listed in the Admission Board on 16.10.2023, the following order was made:

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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 11.10.2023 *inter alia* assailing a 'detention order dated 04.02.2023, bearing reference Detention Order No.03/2023 [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, the detenu is the petitioner.

3.Mr.N.Pragalathan, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu is for alleged offences under Sections 8(c) r/w. 20(b)(ii)(B), 20(b)(ii)(C) and 25 of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of brevity] in Crime No. 303 of 2022 on the file of Kodaikanal Police Station.



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4.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 11.11.2022 but the impugned preventive detention order has been passed on 04.02.2023.

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

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


[M.S.J.] & [R.S.V.J.]
16.10.2023

MR

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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.303 of 2022 on the file of Kodaikanal Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 20(b)(ii)(C) and 25 of The Narcotic Drugs and Psychotropic Substances Act, 1985, [hereinafter 'NDPS Act' for the sake of brevity and convenience]. 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. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detainee was arrested on 12.11.2022 but the impugned preventive detention order has been made only on 04.02.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor submits 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 first adverse case is in Crime No.53 of 2020 on the file of Kodaikanal Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(B) and 22(C) of NDPS Act [alleged occurrence on 13.02.2020], second adverse case is Crime No.1253 of 2020 on the file of Kodaikanal Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act [alleged occurrence on 24.08.2020], third adverse case is Crime No.528 of 2021 on the file of Kodaikanal Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act [alleged occurrence on 08.08.2021], ground case is Crime No.303 of 2022 on the file of Kodaikanal Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 20(b)(ii)(C) and 25 of NDPS Act [alleged occurrence on 11.11.2022] and therefore time consumed remains unexplained.

10. It is informed by the learned Prosecutor that in the ground case, final report has been filed within the prescribed time and it has been taken on file in C.C.No.616 of 2023 on the file of NDPS Court, Madurai. If the detainee moves for regular bail in the Trial Court, we make it clear that the Trial Court shall consider the bail petition on its own merits and in accordance with law [more particularly, NDPS Act and Section 37



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thereat] untrammelled by this order which has been made in a habeas legal drill for the limited purpose of testing the impugned preventive detention order.

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 04.02.2023 bearing reference Detention Order No.03/2023 made by the second respondent is set aside and the detenu Sathish @ Nagaraj @ Ponds, aged about 32 years, son of Thiru.Nataraj, 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.)
15.11.2023

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

P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Dindigul and 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



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order when uploaded in official website of this Court will be watermarked and will also have a QR code.

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent of Prison,
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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DATED : 15.11.2023