



HCP(MD)No.1254 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

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

HCP(MD)No.1254 of 2023

Kannan

... Petitioner

vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600009.

2. The District Magistrate and District Collector,
Office of the District Collector and District Magistrate,
Virudhunagar District.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 Cr.M.P.No. 13/2023 (Goonda) dated 03.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Kannan son of Jeyaraj aged about 20 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.



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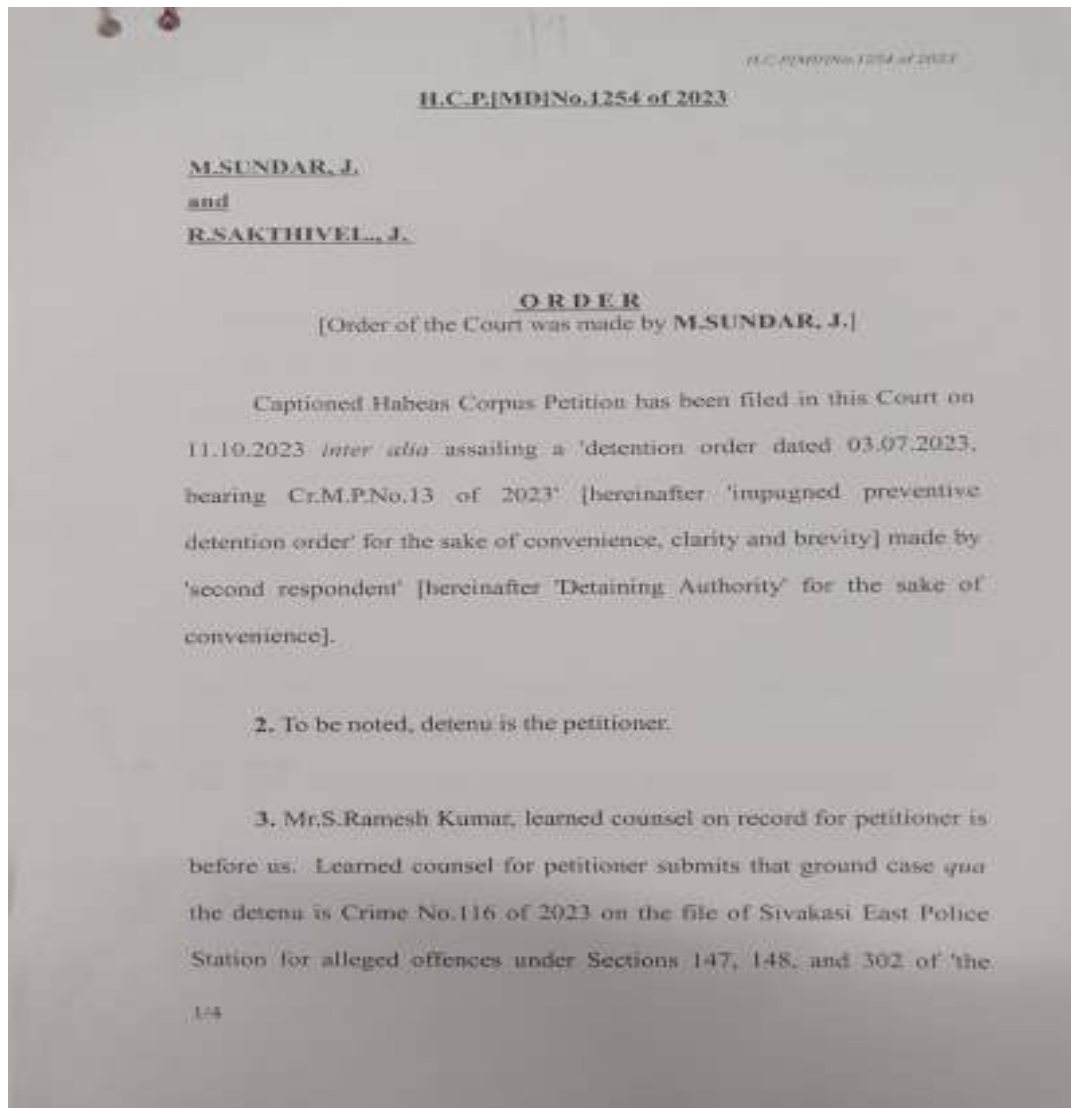
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For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 17.10.2023, the following order was made:





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Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity] and subsequently altered into Sections 147, 148, 302, 294(b) and 341 IPC .

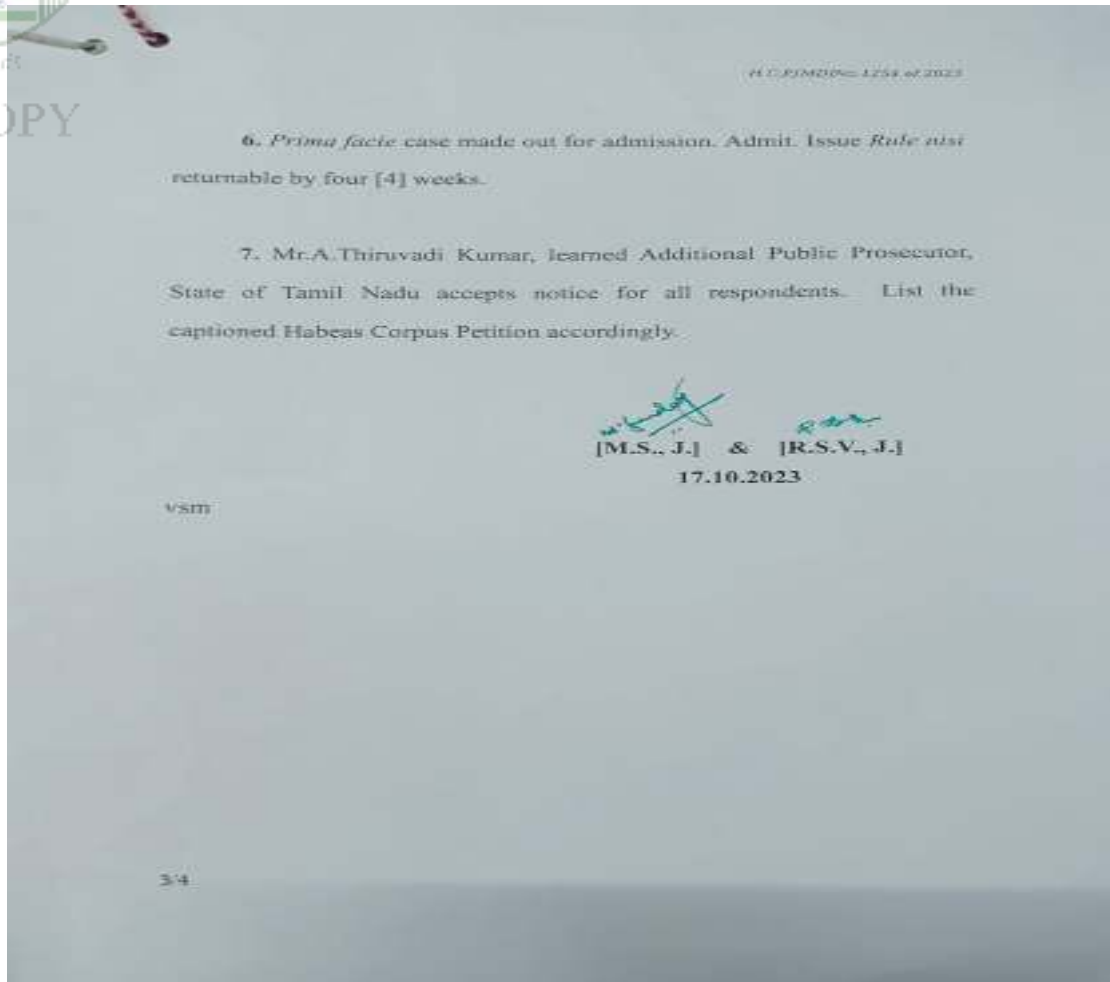
4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, 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 the Detaining Authority has relied on a bail order relating to some other accused in some other case to say that there is a possibility of detenu to come out on bail but the same is not similar to ground case.



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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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.116 of 2023 on the file of Sivakasi East Police Station, for alleged offences under Sections 147, 148 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 147, 148, 302, 294(b) & 341 of 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. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 05.04.2023 but the impugned preventive detention order has been made only on 03.07.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

5. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise.



6. 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.

7. 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***



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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.

8. To be noted, the first adverse case is in Crime No.195 of 2021 on the file of Sivakasi East Police Station for alleged offences under Sections 294(b), 324 and 506(ii) of IPC [alleged occurrence on 20.06.2021], second adverse case is Crime No.269 of 2022 on the file of Sivakasi East Police Station for alleged offences under Sections 294(b), 323, 324 and 506(ii) of IPC and subsequently altered into Sections 294(b), 323, 326 and 506(ii) of IPC [alleged occurrence on 18.06.2022], ground case is Crime No.116 of 2023 on the file of Sivakasi East Police Station, for alleged offences under Sections 147, 148 and 302 of IPC and subsequently altered into Sections 147, 148, 302, 294(b) & 341 of IPC [alleged occurrence on 03.04.2023] and therefore time consumed remains unexplained.

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



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.07.2023 bearing reference Cr.M.P.No.13/2023 (GOONDA) made by the second respondent is set aside and the detenu Thiru.Kannan, aged about 20 years, son of Thiru.Jeyaraj, 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
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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 hard 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,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.

2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Virudhunagar District.



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3. The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 : 15.11.2023