



H.C.P(MD)No.1310 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1310 of 2023

S.Gunasekaran

.. Petitioner/Father of the detainee

VS

1.Government of Tamil Nadu,
Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

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

3.The Superintendent,
Central Prison,
Madurai.

.. Respondents

Prayer:- 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 second respondent in



H.C.P(MD)No.1310 of 2023

Detention Order No.50 of 2023 on 04.08.2023 and detained at Central Prison, Madurai and quash the same and direct the respondents to produce the body or person of the petitioner's son namely Thiru.Alagusundar, male aged about 25 years, son of Gunasekaran and set him at liberty forthwith.

For Petitioner : Mr.B.Jameel Arasu
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 before us in the Admission Board on 01.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:



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H.C.P(MD)No.1310 of 2023

H.C.P(MD)No.1310 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captured Habeas Corpus Petition has been filed in this Court on 18.10.2023 *inter alia* assailing a 'detention order dated 04.10.2023, bearing reference Detention No.50/2023 [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 father of the detenu is the petitioner.

3.Mr.R.Jameelurazu, 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 147 and 363 of 'the Indian Penal Code, 1860 (Act 45 of 1860 [hereinafter 'IPC' for the sake of brevity] altered into Sections 147, 120(B), 294(b), 342, 323, 364(A) and 506(ii) of IPC again altered into



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H.C.P(MD)No.1310 of 2023

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Sections 147, 120(B), 294(b), 342, 323, 304(A), 506(ii) of IPC and Section 174 of the Criminal Procedure Code, 1973 [hereinafter 'Cr.P.C.' for the sake of brevity] and subsequently altered into Sections 147, 120(D), 294(b), 342, 304(ii), 304(A), 506(ii) of IPC and Section 174 of Cr.P.C., in Crime No.76 of 2023 on the file of Rayanpampalli Police Station.

4.The aforementioned impugned preventive detention order has been made on the premise that the detainee 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, Stamp-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 detainee was arrested on 27.06.2022 but the impugned preventive detention order has been passed on 04.08.2023.



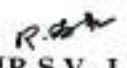
H.C.P(MD)No.1310 of 2023

WEB COPY

H.C.P(MD)No.1310 of 2023

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

7. 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.]
01.11.2023

MR

2. The aforementioned 01.11.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating this final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.



H.C.P(MD)No.1310 of 2023

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3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.76 of 2023 on the file of Rayappanpatti Police Station for alleged offences under Sections 147 and 363 of IPC and subsequently altered into Sections 147, 120-B, 294(b), 342, 323, 364(A) and 506(ii) of IPC and subsequently altered into Sections 147, 120-B, 294(b), 342, 323, 364(A) and 506(ii) of IPC and 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] and again altered into Sections 147, 120-B, 294(b), 342, 304(ii), 364(A) and 506(ii) of IPC and 174 of Cr.P.C. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

4. Mr. B. Jameel Arasu, learned counsel on record for petitioner and Mr. A. Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner submits that 'live and proximate link' between grounds of detention and purpose of detention has snapped as date of arrest in the ground case is 27.06.2023 but the



H.C.P(MD)No.1310 of 2023

impugned preventive detention order has been made only on
04.08.2023.

6.Mr.A.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 sole substratum of the impugned preventive detention order is a solitary case viz., Crime No.76 of 2023 on the file of Rayappanpatti Police Station for alleged offences under Sections 147 and 363 of IPC and subsequently altered into Sections 147,



H.C.P(MD)No.1310 of 2023

120-B, 294(b), 342, 323, 364(A) and 506(ii) of IPC and subsequently altered into Sections 147, 120-B, 294(b), 342, 323, 364(A) and 506(ii) of IPC and 174 of Cr.P.C and again altered into Sections 147, 120-B, 294(b), 342, 304(ii), 364(A) and 506(ii) of IPC and 174 of Cr.P.C.

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 04.08.2023 bearing reference Detention Order No.50/2023 made by the second respondent is set aside and the detenu Thiru.Alagusundar, aged 25 years, son of Thiru.Gunasekaran, 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.)
30.11.2023

Index : Yes/No
Neutral Citation : Yes/No
ps



H.C.P(MD)No.1310 of 2023

Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai.

(ii) 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,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District,
Theni.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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H.C.P(MD)No.1310 of 2023

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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H.C.P(MD)No.1310 of 2023

30.11.2023