



HCP(MD)No.1319 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

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

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1319 of 2023

Subbaiah

: Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

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

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the second



HCP(MD)No.1319 of 2023

respondent made in his proceedings in M.H.S.Confdl.No.63 of 2023 dated 11.09.2023 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Marimuthu @ Mari, S/o.Subbaiah, male, aged about 19 years, who is detained at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

O R D E R

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was listed before this Bench in the Admission Board on 02.11.2023 and this Bench made the following order:

'H.C.P.(MD)No.1319 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL., J.

O R D E R

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

Captioned Habeas Corpus Petition has been filed in this Court on 30.10.2023 inter alia assailing a 'detention order dated 11.09.2023, bearing M.H.S.Confdl No.63 of 2023' [hereinafter 'impugned preventive detention order' for



WEB COPY



HCP(MD)No.1319 of 2023

the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].

2. *To be noted, father of the detenu is the petitioner.*

3. *Mr.K.M.Karunakaran, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is Crime No.131 of 2023 on the file of Shenkottai Police Station registered under Sections 294(b), 302 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] which was subsequently altered into Sections 294(b), 302 and 506(ii) IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of 'Schedule Caste and Scheduled Tribes (Prevention of Atrocities Act, 1989' [hereinafter 'SC/ST (POA) Act'].*

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 a similar case bail order relied on in the grounds booklet furnished to the detenu is not similar in nature.*

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.'*



WEB COPY

2.As the aforementioned Admission Board order captures all essentials ie., essentials imperative for appreciating this final order we refrain from setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 02.11.2023 shall now be read as an integral part and parcel of this final order. This also means that the short forms, abbreviations and short references used in the Admission Board order will continue to be used in the instant final order for the sake of convenience and clarity.

3.There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.131 of 2023 on the file of Shenkottai Police Station for the offences under Sections 294(b), 302 and 506(ii) of IPC which was subsequently altered into Sections 294(b), 302 and 506(ii) IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (PoA) Act. 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.Mr.K.M.Karunakaran, learned counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all respondents are before us.



HCP(MD)No.1319 of 2023

5.In the support affidavit *qua* captioned HCP several grounds have been raised but learned Counsel for petitioner predicated his campaign against the impugned Preventive Detention Order on the point that the detenu was arrested on 15.06.2023 but the impugned preventive detention order has been made only on 11.09.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6.Mr.S.Ravi, 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



HCP(MD)No.1319 of 2023

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 impugned preventive detention order is predicated on a solitary case viz., Crime No.131 of 2023 on the file of Shenkottai Police Station for the offences under Sections 294(b), 302



HCP(MD)No.1319 of 2023

and 506(ii) of IPC which was subsequently altered into Sections 294(b), 302 and 506(ii) IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (PoA) Act and therefore this solitary case is the sole substratum of the impugned preventive detention order.

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 11.09.2023 bearing reference M.H.S.Confdl.No.63/2023 made by the second respondent is set aside and the detenu Thiru.Marimuthu alias Mari, male, aged 19 years, son of Subbaiah, 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.]

04.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR



HCP(MD)No.1319 of 2023

Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai. All concerned are 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,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1319 of 2023

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

MR

ORDER MADE IN
H.C.P.(MD)No.1319 of 2023

04.12.2023