



HCP(MD)No.2074 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.2074 of 2022

Sakthivel

: Petitioner

Vs.

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

2.The District Collector cum District Magistrate,
Karur District, Karur.

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

4.The Inspector of Police,
K.Paramathi Police Station,
Karur.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the detention order made in Cr.M.P.No.21/2022 dated 23.11.2022 passed by the second respondent and set aside the same by setting the detenu namely Sakthivel S/o.Kumarasamy aged about 24 years and set him at liberty now detained at Central Prison, Trichy.

For Petitioner : Mr.N.Pragalathan

for Mr.K.Dinesh Babu

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 23.11.2022 bearing reference Cr.M.P.No.21/2022' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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2.Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.There is no adverse case. The impugned preventive detention order has been passed based on a solitary case in Crime No.115 of 2022 on the file of K.Paramathi Police Station for alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.N.Pragalathan learned counsel representing Mr.K.Dinesh Babu learned Counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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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 11.09.2022 but the impugned preventive detention order has been made only on 23.11.2022 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



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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.



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9.To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.115 of 2022 on the file of K.Paramathi Police Station for alleged offence under Section 302 of IPC 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 23.11.2022 bearing reference Cr.M.P.No.21/2022 made by the second respondent is set aside and the detenu Thiru.Sakthivel, male, aged 24 years, son of Thiru.Kumarasamy, 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.]

04.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Thiruchirappalli.



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To

- 1.The Additional Chief Secretary to Government,
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- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
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Karur.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

ORDER MADE IN
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