



H.C.P(MD)No.1312 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **11.12.2023**

Coram

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

H.C.P(MD)No.1312 of 2023

Parveen

.. Petitioner

VS

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

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

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

.. 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 respondent No.2 in Cr.M.P.No. 13/2023 dated 25.07.2023 and quash the same and direct the respondents to produce the detenu by name Mubarak Ali alias Ali, son of Kadhar Batcha aged about 32 years, now detained as “Sexual Offender” at Trichy Central



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Prison, before this Court and set him at liberty forthwith.

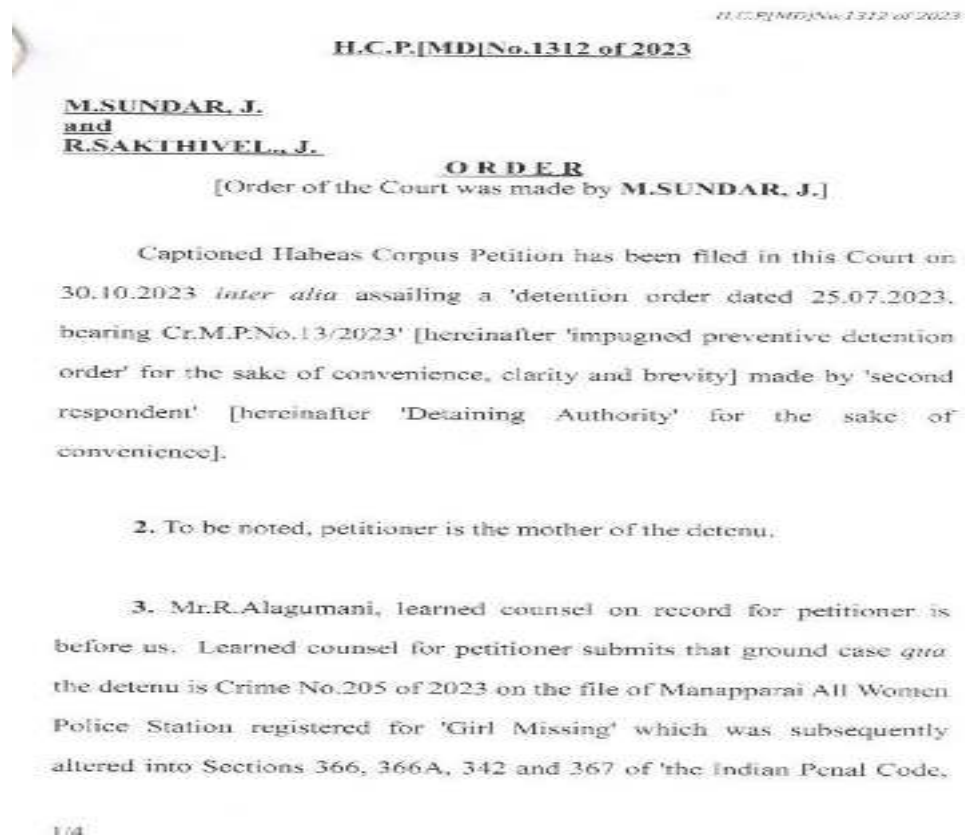
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For Petitioner : Mr.S.Rameshkumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity] was listed in the Admission Board before us on 02.11.2023 and we made the following order:





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1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] r/w Section 5(1) and 6(1) of the 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO' Act for the sake of convenience and brevity].

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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, Stunt-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 06.05.2023 but the impugned preventive detention order has been passed on 25.07.2023.

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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.]
02.11.2023

VSM

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and we would plunge into the legal drill of testing the impugned preventive detention order in the habeas legal drill on hand. Suffice to say that aforementioned Admission Board order dated 02.11.2023 shall now be read as an integral part and parcel of this final order. It means that the short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also.



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3. Mr.S.Rameshkumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4. When the matter was taken up, this Court was informed without any disputation and contestation that co-accused in the ground case was also clamped with a preventive detention order, the same was challenged vide HCP (MD) No.1276 of 2023 [*Niyaz Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, State of Tamil Nadu*] and this HCP was allowed by an order of this Court dated 04.12.2023 which reads as follows:



HCP(MD)No.1276 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1276 of 2023

Niyaz Vs. : Petitioner

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat,
Fort St. George, Chennai - 600 009.

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

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

: 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 entire records connected with the detention order of the second respondent in C.No. 14/2023 dated 02.08.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Niyaz, son of Kadhar, aged about 32 years, now confined as "Sexual Offender" at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[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 19.10.2023 and this Bench made the following order:



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HCP(MD)No.1276 of 2023

'H.C.P(MD)No.1276 of 2023

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 13.10.2023 inter alia assailing a 'detention order dated 02.08.2023, bearing reference No.Cr.M.P.No. 14/2023 [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.S.Rameshkumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for the offence relating to 'Girl Missing' and subsequently altered for the alleged offences under Sections 366, 366-A, 342, 367 of the Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity] read with Section 5(i) and Section 6(1) of Protection of Children from Sexual Offences Act, 2012 in Crime No.205 of 2023 on the file of Manapparai Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(gggg) 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,

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'Slam-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 06.05.2023 but the impugned preventive detention order has been passed on 02.08.2023.

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

7. Mr.A.Thiruvandi Kumar, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2.As the aforementioned Admission Board order captures all essentials i.e., 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 19.10.2023 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 also for the sake of convenience and clarity.



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3. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.205 of 2023 on the file of Marappara Police Station for the offence relating to 'Girl Missing' and subsequently altered for the alleged offences under Sections 366, 366-A, 342, 367 of IPC r/w Section 5(i) and Section 6(i) of The Protection of Children from Sexual Offences Act, 2012 [hereinafter 'POCSO Act' for the sake of brevity]. 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.R.Aragumani, learned counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit, 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 06.05.2023 but the impugned preventive detention order has been made only on 02.08.2023

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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 Tripura, 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

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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 *Ganathi 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.206 of 2023 on the file of Marappara Police Station for the offence relating to 'Girl Missing' and subsequently altered for the alleged offences under Sections 366,

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HCP(MD)No.1276 of 2023

366-A, 342, 367 of IPC r/w Section 5(i) and Section 6(1) of POCSO Act and therefore this solitary case is the sole substratum of the impugned preventive detention order.

10. This Bench is informed by the learned Additional Public Prosecutor on instructions that in the solitary case final report has been filed within the prescribed time line and the same is now on the file of Special Court for, POCSO Cases, Trichy in Spl.S.C.No.91 of 2023. As it is submitted that charge sheet has been filed within the prescribed time the detenu will have to move for regular bail. We make it clear that if the detenu seeks bail before the trial Court, the trial Court shall deal with the bail application on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of testing the impugned preventive detention order in habeas legal drill on hand.

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



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12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.08.2023 bearing reference Cr.M.P.No.14/2023 made by the second respondent is set aside and the detenu Thiru.Niyaz, male, aged 32 years, son of Kadhar, 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.

IM.S.J.I & IR.S.V.J.I
04.12.2023

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

Post Script: Registry to forthwith communicate this order to jail authorities in Central Prison, Tiruchirappalli. All concerned are to act on this order being uploaded in official website of this Court without hesitating 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.

5. There is also no dispute or contestation that the point that enured to the favour of the co-accused in *Niyaz's* case is directly and squarely available to the detenu in the case on hand also. This reminds us of the age old adage 'Sauce for the Goose is Sauce for the Gander too'. In this view of the matter, captioned HCP will also stand allowed.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.07.2023 bearing Cr.M.P.No.13/2023



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made by the second respondent is set aside and the detenu Thiru.Mubarak Ali alias Ali, aged 32 years, son of Kadhar Batcha, 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.)
11.12.2023**

Index : Yes

Neutral Citation : Yes

PKN

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

(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.



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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District, Tiruchirappalli.
 - 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy 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.

PKN

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