



HCP(MD)No.1339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2023

CORAM :

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

HCP(MD)No.1339 of 2023

Muthuraja

... Petitioner

vs.

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

2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

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 No.86/BCDFGISSSV/2023 dated 13.10.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthukumar, son of Muthuraja, aged about 31 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.



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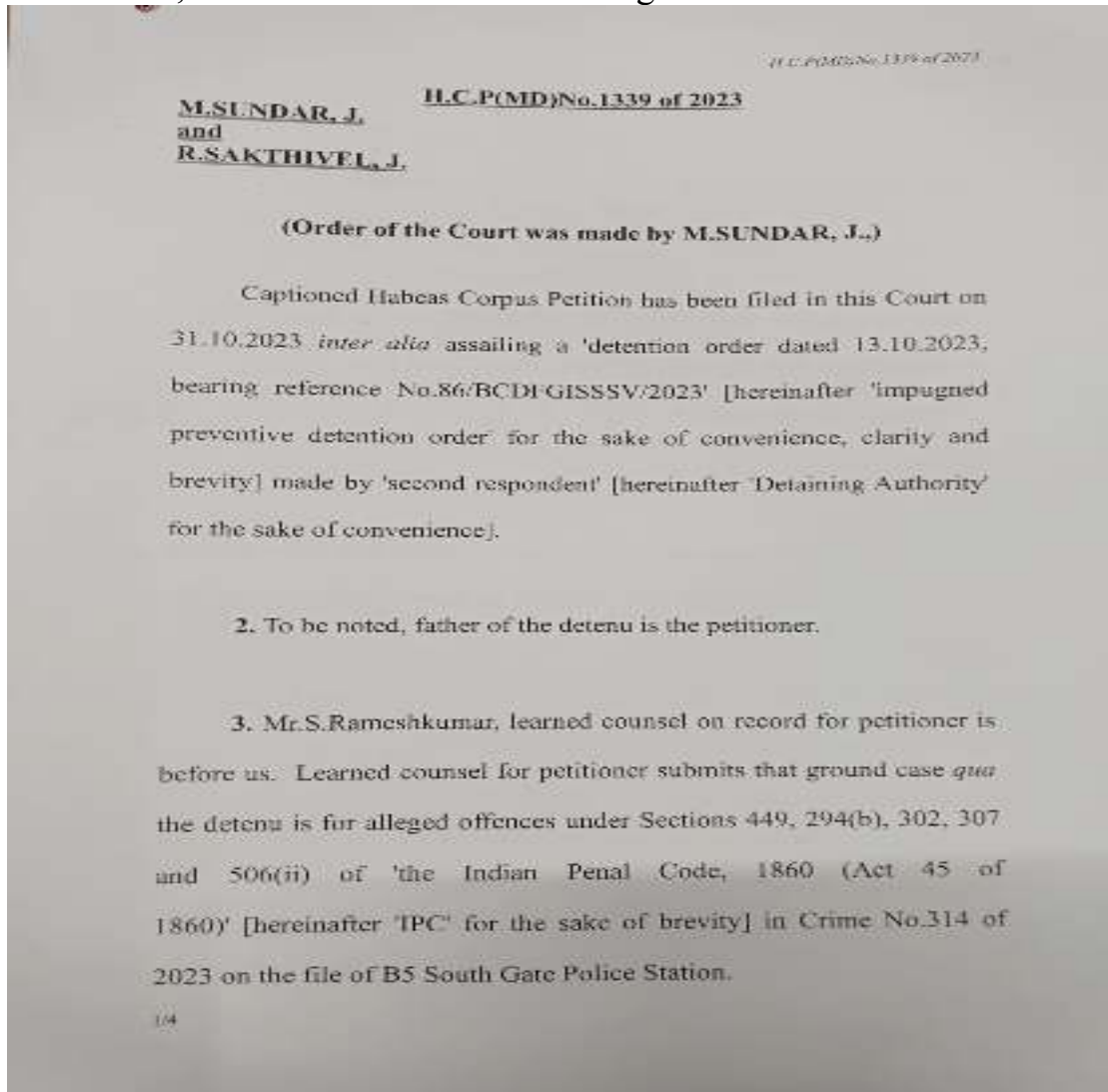
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For Petitioner : Mr.S.Rameshkumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity) was listed in the Admission Board on 06.11.2023, this Bench made the following order:





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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 live and proximate link between the grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 12.07.2023 but the impugned preventive detention order has been made only on 13.10.2023.

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

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7. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S.J.,]


[R.S.V.J.,]

06.11.2023

ps



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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.314 of 2023 on the file of B5 South Gate Police Station registered for alleged offences under Sections 449, 294(b), 302, 307 and 506(ii) 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.

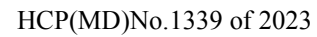
4. Today, Mr.S.Rameshkumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.



5. In the final hearing board, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 12.07.2023 but the impugned preventive detention order has been made only on 13.10.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

6. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits 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,



8. To be noted, ***Banik*** case has been respectfully followed by Court in ***Gomathi Vs. The Principal Secretary to Government and*** reported vide Neutral Citation of Madras High Court being ***MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu and*** reported vide Neutral Citation of Madras High Court being ***MHC/733, Sangeetha Vs. The Secretary to the Government and*** reported vide Neutral Citation of Madras High Court being ***MHC:1110, N.Anitha Vs. The Secretary to Government and*** reported vide Neutral Citation of Madras High Court being ***MHC:1159*** and a series of similar orders in HCP cases.

9. To be noted, the adverse case is in Crime No.378 of 2022 on the file of Sivagangai District Town Police Station for alleged offences



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under Sections 294(b), 323, 506(i) IPC and subsequently altered into Sections 294(b), 325, 506(i) IPC [alleged occurrence on 22.09.2022], ground case is Crime No.314 of 2023 on the file of B5 South Gate Police Station registered for alleged offences under Sections 449, 294(b), 302, 307 and 506(ii) of IPC [alleged occurrence on 11.07.2023] and therefore time consumed remains unexplained.

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 13.10.2023 bearing reference No. 86/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Muthukumar, aged about 31 years, son of Thiru.Muthuraja, 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 / No
Neutral Citation : Yes / No
bala



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P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Virudhunagar and Central Prison, Madurai. 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 Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

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 : 11.12.2023