



HCP(MD)No.1343 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.1343 of 2023

M.Kulanthaivel

... Petitioner

vs.

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

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

3. The Superintendent of Prison,
Central Prison, Trichy,
Trichy 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 proceedings in Cr.M.P.No.16/2023 dated 26.09.2023 and quash the same and direct the respondents to produce the body or person of the detenunamely the petitioner's son i.e., Praveenkumar alias Praveen son of Kulanthaivel aged about 23 years now detained at Central Prison, Trichy, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan

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 on 06.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:

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

H.C.P(MD)No.1343 of 2023

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 01.11.2023 *inter alia* assailing a 'detention order dated 26.09.2023, bearing reference Cr.M.P.No.16/2023' [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, father of the detenu is the petitioner.

3. Mr.N.Pragalathan, 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, 148, 341, 294(b), 307 and 302 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.358 of 2023 on the file of Manapparai Police Station.

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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 a similar case bail order furnished 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.

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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 06.11.2023 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 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 order dated 06.11.2023 in this order also for the sake of convenience and clarity.



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

4. 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.358 of 2023 on the file of Manapparai Police Station, for alleged offence under Sections 147, 148, 341, 294(b), 307 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for 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.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel on record for petitioner posited his challenge to the impugned preventive detention order on the ground that similar case relied on by the detaining authority is not similar and therefore, subjective satisfaction regarding imminent possibility of detenu being enlarged on bail is impaired but today, learned counsel changed his line of attack and predicated his campaign against the



impugned preventive detention order on the point that the detenu was arrested on 09.07.2023 but the impugned preventive detention order has been made only on 26.09.2023 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, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be



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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 adverse case is in Crime No.359 of 2023 on the file of Manapparai Police Station for alleged offences under Sections 294(b), 353 and 307 of IPC [alleged occurrence on 09.07.2023], ground case is Crime No.358 of 2023 on the file of Manapparai Police Station,



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for alleged offence under Sections 147, 148, 341, 294(b), 307 and 302 of IPC [alleged occurrence on 08.07.2023] 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 26.09.2023 bearing reference in Cr.M.P.No.16/2023 made by the second respondent is set aside and the detenu Thiru.Praveenkumar alias Praveen, aged about 23 years, son of Thiru.Kulanthaivel, 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

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

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

ORDER MADE IN
HCP(MD)No.1343 of 2023

DATED : 11.12.2023