



HCP(MD)No.1348 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2023

CORAM :

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

HCP(MD)No.1348 of 2023

Ayishama

... Petitioner

vs.

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

2. The District Collector / District Magistrate,
Office of the Collectorate Building,
Trichirappalli District,
Trichirappalli.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent in Cr.M.P.No.15/2023 dated 02.08.2023 and quash the same and direct the respondents to produce the body or person of the detenu namely Satham, S/o.Mukthar, aged about 34 years (Now detained at Central Prison, Trichy) before this Court and set him at liberty.

For Petitioner : Mr.M.Karunakaran for
Mr.D.S.Haroon Rasheed

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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4.The aforementioned impugned preventive detention order has been made on the premise that the detainee 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, 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 detainee 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 State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S.J.] & [R.S.V.J.]
07.11.2023

MR

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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



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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 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 Manapparai Police Station registered for 'Girl Missing' and subsequently altered into Sections 366, 366A, 342, 367 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] r/w Sections 5(1) and 6(1) of Protection of Children from Sexual Offences Act, 2012 [hereinafter 'POCSO Act' 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.

4. In the final hearing 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 07.05.2023 but the impugned preventive detention order has been made only on



02.08.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.

5. 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.

6. 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 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.

7. 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.

8. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.205 of 2023 on the file of Manapparai Police Station registered for 'Girl Missing' and subsequently altered into Sections 366, 366A, 342, 367 of IPC r/w Sections 5(1) and 6(1) of POCSO Act [alleged occurrence on 01.05.2023] and therefore this solitary case is the sole substratum of the impugned preventive detention order.



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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.08.2023 bearing reference in Cr.M.P.No.15/2023 made by the second respondent is set aside and the detenu Thiru.Satham, aged about 34 years, son of Thiru.Mukthar, 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.)
06.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Trichirappalli. 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 Chief Secretary to Government,
Home, Prohibition and Excise Department,
St.George Fort,
Chennai-600 009.



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2. The District Collector and District Magistrate,
Office of the Collectorate Building,
Trichirappalli District,
Trichirappalli.

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

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 : 06.12.2023