



H.C.P(MD)No.1376 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.1376 of 2023

Jakkammal

.. Petitioner

VS

1.The Additional Chief Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

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

3.The Inspector of Police,
Alangulam Police Station,
Tenkasi District.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

.. 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 M.H.S.Confdl. No.67/2023 dated 06.10.2023 and quash the same and direct the respondents to produce the detenu, namely K.Suresh, son of Kuzhanthaipandi aged about



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29 years, who is detained in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Venkatesh
for M/s.J.Gavin Silvester

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 10.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:

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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 06.11.2023 *inter alia* assailing a 'detention order dated 06.10.2023, bearing M.H.S.Confdl No.67 of 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]. To be noted, third respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.K.Mondela Anand, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu is Crime No.189 of 2023 on the file of Alangulam Police Station registered under Sections 147, 148, 149, 448, 294(b), 323, 324 ,

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302 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] which was subsequently altered into Sections 448, 294(b), 323, 324, 302 and 506(ii) IPC.

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 the respondents have not furnished the booklet containing all the supporting documents within 5 days as stipulated under Section 8(1) of Act 14 of 1982.

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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.]
10.11.2023

vsm

2. The aforementioned 10.11.2023 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



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order. Be that as it may, we are using the short forms, short references and abbreviations used in the order dated 10.11.2023 in this order also for the sake of convenience and clarity.

3. Mr.C.Venkatesh, learned counsel representing the counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.189 of 2023 on the file of Alangulam Police Station for the alleged offences under Sections 147, 148, 149, 448, 294(b), 323, 324, 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 448, 294(b), 323, 324, 302 and 506(ii) of IPC. Considering the nature of the challenge to the impugned preventive 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 respondents have not furnished the booklet containing all supporting documents within five days as stipulated under Section 8(1) of At 14 of 1982, 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 01.07.2023 but the impugned preventive detention order has been made only on 06.10.2023 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 and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public 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 1376***]. 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,



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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.

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.189 of 2023 on the file of Alangulam Police Station, for alleged offences under Sections 147, 148, 149, 448, 294(b), 323, 324, 302 and 506(ii) of IPC and subsequently altered into Sections 448, 294(b), 323, 324, 302 and 506(ii) 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 06.10.2023 bearing M.H.S.Confdl. No. 67/2023 made by the second respondent is set aside and the detenu Thiru.K.Suresh, aged 29 years, son of Thiru.Kuzhanthaipandi, 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



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P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Perurani and Central Prison, Palayamkottai. 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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 - 3.The Inspector of Police,
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Tenkasi District.
 - 4.The Superintendent of Prison,
Central Prison,
Palayamkottai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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and
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