



H.C.P(MD)No.1418 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2023

Coram

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

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S.Nagarathinam

.. Petitioner/Wife of the detenue

VS

1.State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Home, Prohibition & Excise Department,
Chennai – 9.

2.The District Collector/District Magistrate,
Sivagangai District,
Sivagangai.

3.The Superintendent,
Central Prison,
Madurai. .. Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus to call for the records pertaining to the proceedings of the second respondent made in his proceedings in Crl.M.P.No.19/Goonda/2023 dated 22.09.2023 and quash the same and set petitioner's husband by name “Sukumar, S/o.Shanmugam, aged about 26 years” at liberty from the Superintendent, Central Prison, Madurai.

For Petitioner : Mr.C.Karthikeya
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 convenience and clarity] came up for admission on 21.11.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR J.
and
R.SAKTHIVELU J.

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 15.11.2023 *inter alia* assailing a 'detention order dated 22.09.2023, bearing Cr.M.P.No.19/Goonadar2023' [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, wife of the detenu is the petitioner.

3. Mr.C.Prithviraj, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu is Crime No.18 of 2023 on the file of Sivagangai Taluk Police Station registered under Sections 435 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity]



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which was subsequently altered into Sections 506(ii) IPC and Section 3(a) of Explosive Substances Act.

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 detenu was arrested on 12.06.2023 but the impugned preventive detention order has been passed on 22.09.2023.



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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.]
21.11.2023

vsm

2.The aforementioned 21.11.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the abbreviations, short forms and short references used in the Admission Board order in this order also for the sake of convenience and clarity.



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3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.18 of 2023 on the file of Sivagangai Taluk Police Station for alleged offences under Sections 435 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Section 506(ii) of IPC and Section 3(a) of Explosive Substances Act. 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 support affidavit qua 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 12.06.2023 but the impugned preventive detention order has been made only on 22.09.2023 resulting in 'live and proximate link' between grounds of detention and purpose of detention getting snapped.



5.Mr.A.Thiruvadi Kumar, 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.

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.



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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, out of the four adverse cases, the first adverse case is in Crime No.412 of 2022 on the file of Coutrallam Police Station (occurrence was on 10.11.2022), second adverse case is in Crime No.284 of 2022 on the file of Sivagangai Taluk Police Station (occurrence was on 07.12.2022), third adverse case is in Crime No.269 of 2023 on the file of E3 Anna Nagar (Crime Branch) Police Station (occurrence was on 12.05.2023) and fourth adverse case is in Crime



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No.275 of 2023 on the file of E3 Anna Nagar (Crime Branch) Police Station (occurrence was on 13.05.2023) and therefore time consumed remains unexplained.

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 22.09.2023 bearing reference Cr.M.P.No.19/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Sukumar, aged 26 years, son of Thiru.Shanmugam, 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.)
20.12.2023

Index : Yes

Neutral Citation : Yes

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



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(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.

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai – 9.
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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