



HCP(MD)No.778 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM :

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

HCP(MD)No.778 of 2023

M.Babyammal

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-9.

2. State Represented by
The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi,
Thoothukudi District.

3. The Superintendent,
Central Prison,
Palaymakottai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records from the 2nd respondent in H.S.(M).Confdl.No.63/2023 dated 29.04.2023 by setting aside the said order of detention passed by the 2nd respondent and setting the detenu M.Solaiyappan S/o.Murugan aged 23 years at liberty now detained at the Central Prison, Palayamkottai.



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HCP(MD)No.778 of 2023

For Petitioner : Mr.S.Senthil Sankara Natha Kumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the grandmother of detenu assailing the 'preventive detention order dated 29.04.2023 bearing reference No.M.H.S.Confdl No.63/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Thattaparai Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and the second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

2. When the captioned HCP was taken up, this Court was informed without any dispute or contestation that the captioned matter is directly covered by an order passed in **Porkilai @ Thenmozhi vs. The Chief Secretary to Government of Puducherry, Puducherry and others reported in 2023 : MHC : 4007** [Neutral Citation of



HCP(MD)No.778 of 2023

Madras High Court] and a scanned reproduction of the said order is as

follows:

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2023:MHC:4007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MSUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.470 of 2023

Porkilai @ Thenmozhi
W/o.Siva @ Kutti Siva

.. Petitioner

Vs.

1. The Chief Secretary to Government of Puducherry
Union of Puducherry
Chief Secretariat, Puducherry.
2. The Secretary to Lieutenant Governor
Rajnivas, Puducherry.
3. The District Magistrate-cum-Authorised Officer
Office of the District Magistrate
1st Floor, Vazhadavoor Road
Kavndanpalayam, Puducherry - 605 009.
4. The Superintendent of Police (East)
Puducherry.
5. The Chief Superintendent of Jail
Central Prison, Kalapet
Puducherry.

Page Nos.1/10

<https://www.mhc.tn.gov.in/judis>



HCP(MD)No.778 of 2023

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H.C.P.No.479 of 2023

6. The State House Officer
Orleanpet Police Station
Puducherry,

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records relating to the detention order in No. 02/DM/RO/D2/PPASAA/2023 dated 14.02.2023 passed by the 3rd respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondents to produce the petitioner's husband Siva @ Kutti Siva, S/o. Joseph, aged about 33 years, the detenu now confined in Central Prison, Kalapet, Puducherry before this Hon'ble Court and set the petitioner's husband Siva @ Kutti Siva S/o. Joseph aged about 33 years, the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel along with Ms.Kokila representing Mr.K.Sasindran
For Respondents	:	Mr.K.S.Mohandasa Public Prosecutor (Puducherry) assisted by Ms.N.Danalatchoumy

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition'
[hereinafter 'HCP' for the sake of brevity, convenience and clarity].

Page Nos.2/10

<https://www.mhc.tn.gov.in/judis>



HCP(MD)No.778 of 2023

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H.C.P.No.470 of 2023



2. When the captioned HCP was listed before this Court 'For Admission' on 28.03.2023, the following proceedings / order was made:

H.C.P.No.470 of 2023

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 inter alia assailing a detention order dated 14.02.2023 bearing reference No.02/DM/RO/D2/PPASAA/2023 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 399 and 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.307 of 2022 on the file of Orleanpet Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Dangerous Person' under sub-section (1) of Section 3 of 'the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010)'

Page Nos.3/10

<https://www.mhc.tn.gov.in/judis>



HCP(MD)No.778 of 2023

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H.C.P.No.479 of 2021

[hereinafter 'PPASA Act' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that the representation sent by the petitioner was not properly considered by the Detaining Authority.

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

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

3. The aforementioned Admission Board order captures essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity. To be noted, 'preventive detention order dated 14.02.2023 bearing reference No.02/DM/RO/D2/PPASAA/2023' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

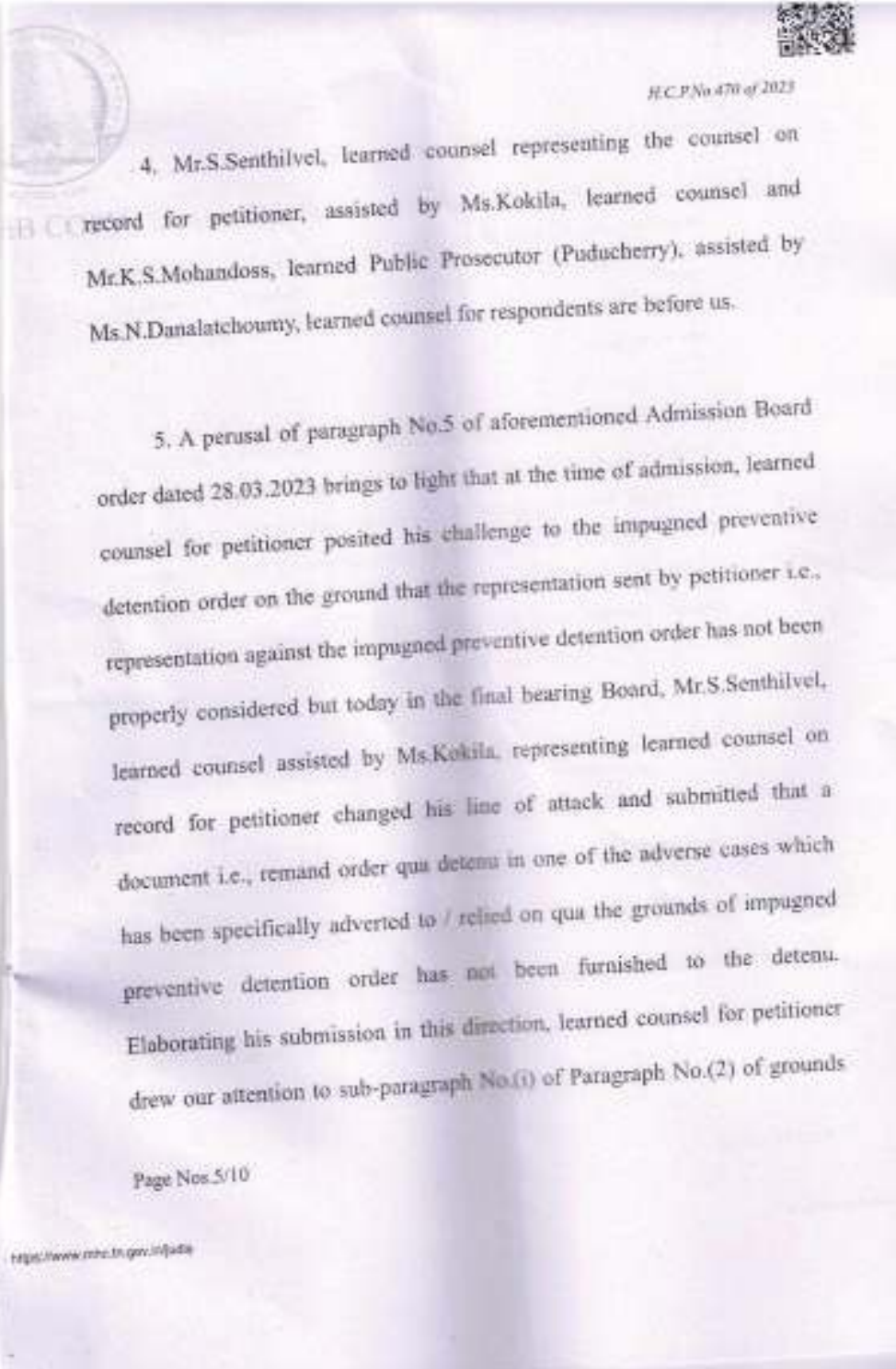
Page Nos.4/10

<https://www.mhc.tn.gov.in/judis>



HCP(MD)No.778 of 2023

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HCP(MD)No.778 of 2023

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H.C.P.No.479 of 2023

of impugned preventive detention order which reads as follows:

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'2. The grounds on which the said detention order has been made against the said Siva @ Katti Siva (33), S/o. Joseph, 3rd Cross Street, Annai Indira Ninaiva Nagar, Orleanpet, Puducherry including the details of his previous involvement in criminal cases are as follows:

(a) to (h)

(i) The petitioner further submits that the counter petitioner involved in Arms Act in Cr.No.153/2022 u/s.448, 506(ii) IPC and 25(1-A) of Arms Act, dated 18.11.2022 of Reddiarpalayam Police Station, Puducherry in the case he got anticipatory bail. Presently the counter petitioner was arrested and remanded into judicial custody concern in Criminal No.307/2022, u/s.399, 402 IPC of Orleanpet P.S., Puducherry on 27.12.2022.'

Learned counsel submitted that reference to 'counter petitioner' in the aforementioned paragraph is reference to detenu. Learned counsel submitted that grounds of impugned preventive detention order made by Detaining Authority categorically relies on factum of detenu being remanded to judicial custody on 27.12.2022 in Crime No.307 of 2022 on the file of Orleanpet Police Station, Union Territory of Puducherry but the remand order has not been furnished to the detenu.

Page Nos.6/10

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<https://www.mhc.tn.gov.in/judis>



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HCP(MD)No.778 of 2023



H.C.P.No.470 of 2023

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6. In response to the aforementioned argument, Mr.K.S.Mohandoss, learned Public Prosecutor for Union Territory of Puducherry, assisted by Ms.N.Danalatchoumy, learned counsel, drew our attention to page Nos.140 to 144 of the grounds booklet and submitted that Arrest / Court Surrender Form has been furnished to the detenu.

7. We carefully considered the submissions made on both sides. We find from the Arrest / Court Surrender Form and remand requisition report of police at Page Nos.140 to 144 of the grounds booklet that the date of arrest has been shown as 26.12.2022 whereas paragraph No.2(i) of grounds of impugned preventive detention order, to which our attention was drawn shows the date of arrest as 27.02.2022. This by itself will baffle the detenu. This by itself is a ground that is good enough to dislodge the impugned

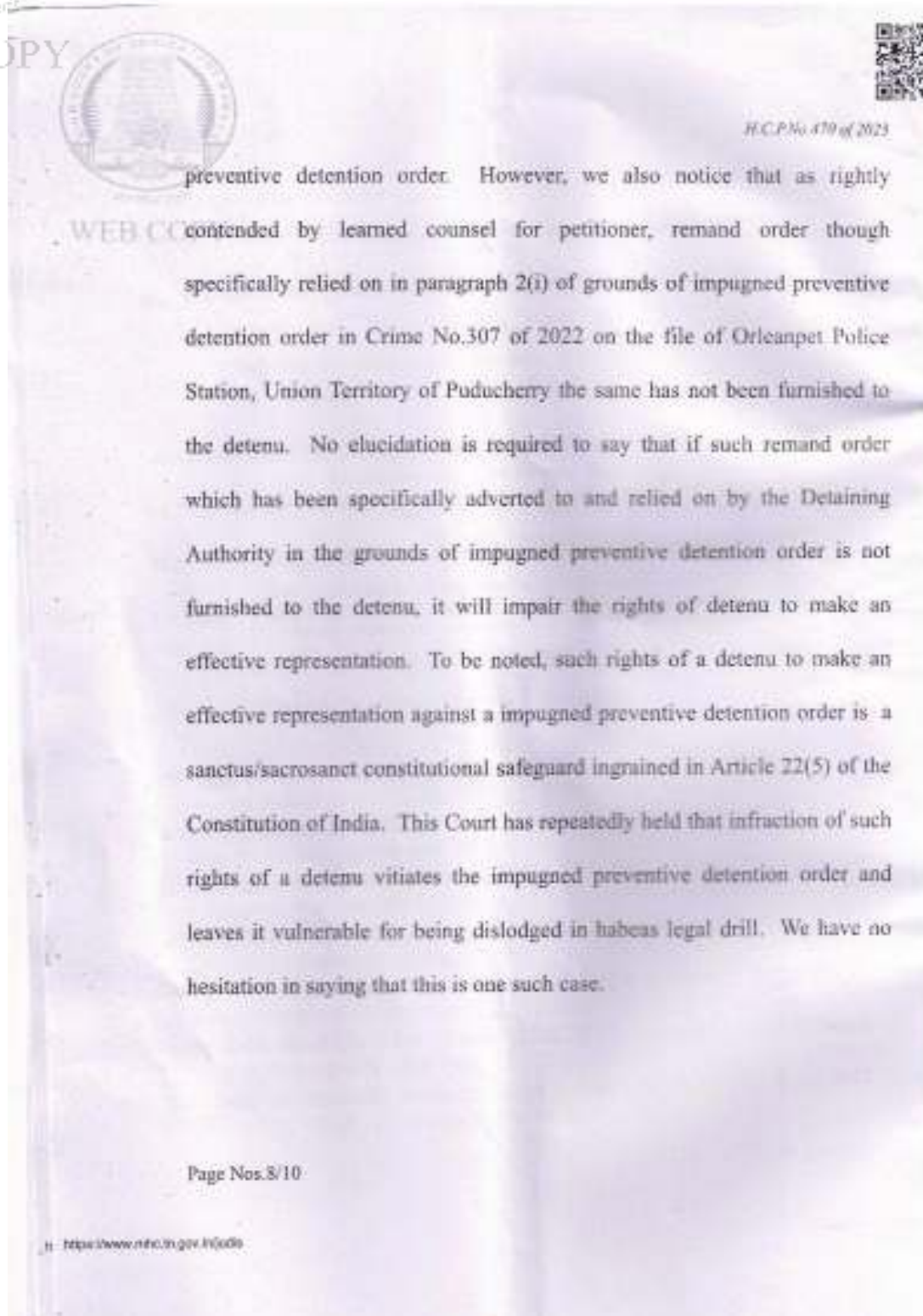
Page Nos.7/10

<https://www.mhc.tn.gov.in/judis>



HCP(MD)No.778 of 2023

WEB COPY



Page Nos.8/10

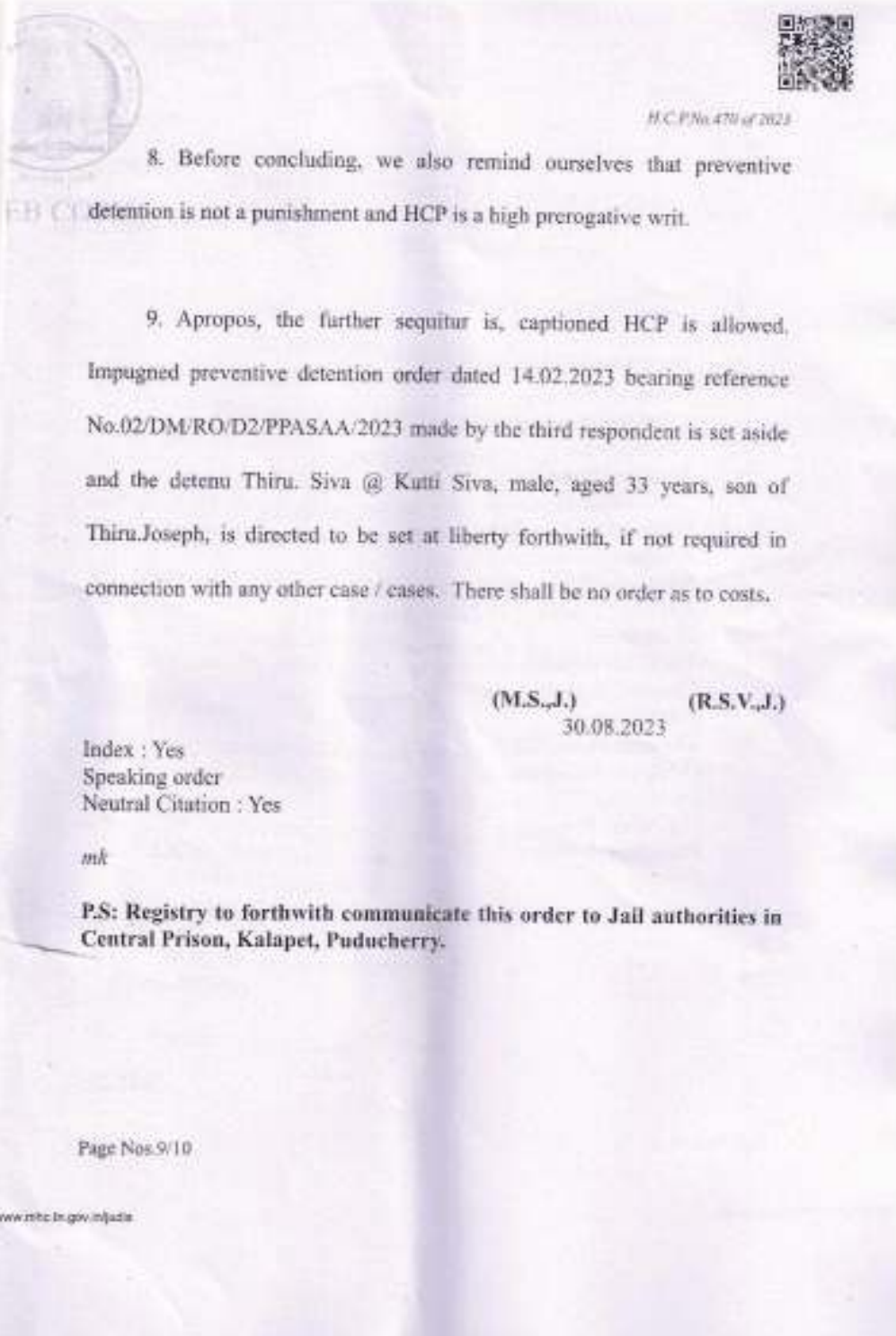
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HCP(MD)No.778 of 2023





HCP(MD)No.778 of 2023

3. In the case on hand, the grounds booklet brings to light that the prayer for remand is at pages 61 to 65, but the remand order has not been supplied to the detenu though that has been relied on by the detaining authority in the course of making the impugned preventive detention order.

4. In the light of the narrative thus far, the impugned preventive detention order is also liable to be dislodged in this habeas legal drill.

5. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.04.2023 bearing reference H.S.(M).Confdl.No. 63/2023 made by the detaining authority is set aside and the detenu Thiru.M.Solaiyappan aged 23 years, son of Thiru.Murugan, 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.)
16.10.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.



HCP(MD)No.778 of 2023

To

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1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-9.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi,
Thoothukudi District.
3. The Superintendent,
Central Prison,
Palaymakottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.778 of 2023

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

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ORDER MADE IN
HCP(MD)No.778 of 2023
DATED : 16.10.2023