



H.C.P(MD)No.984 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **20.11.2023**

Coram

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

H.C.P(MD)No.984 of 2023

Josephin

.. Petitioner

VS

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Thiruchirappalli City,
Tiruchirappalli.

3.The Superintendent of Prison,
Trichirappalli Central Prison,
Tiruchirappalli.

.. 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 C.No. 67/Detention/C.P.O/T.C/2023, dated 10.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name



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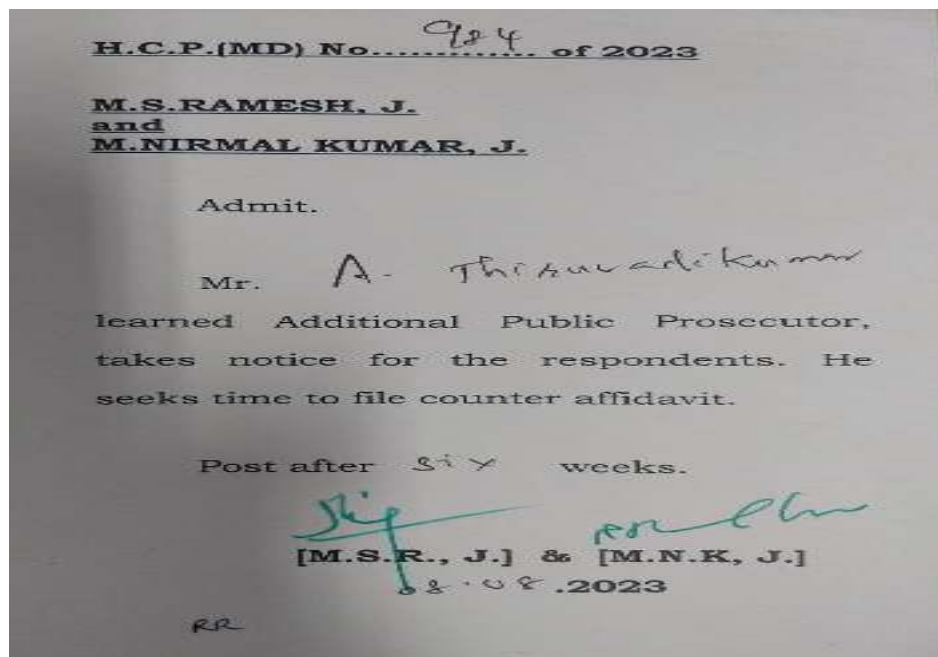
Kirubakaran, son of Joshi, aged about 23 years, now confining as 'GOONDA' at Tiruchirappalli Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.S.Ramesh 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 brevity] was listed in the admission board before Hon'ble predecessor bench on 08.08.2023 and the following order was made:





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2. Therefore, it has now become necessary to set out factual matrix in a nutshell in this final order.

3. Captioned HCP has been filed by the mother of the detenu assailing a 'preventive detention order dated 10.07.2023 bearing C.No. 67/Detention/C.P.O/T.C/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 but we find that 'Station House Officer of Palakkarai Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

4. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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5. There are three adverse cases and one ground case. The ground case which constitutes the substantial part of substratum of the impugned preventive detention order is Crime No.855 of 2023 on the file of Palakkarai Police Station registered under Sections 394 r/w 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.

6. Mr.S.Rameshkumar, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

7. In the support affidavit though several points have been raised, in the final hearing board, Mr.S.Rameshkumar, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as against imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this point, learned counsel drew the attention of this Bench to a portion of paragraph 5 of the grounds of



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impugned preventive detention order which reads as follows:

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'.....In a similar case registered in Tiruchirappalli City Ariyamangalam PS Cr.No.933/2022 u/s 394 r/w 397 IPC, bail was granted to the accused Bharathi who was remanded on 26.08.2022 by the Principal District and Sessions Judge, Tiruchirappalli in Crl.M.P.3863/2022 dated 12.09.2022. Hence, I infer that it is very likely of his (Kirubakaran) coming out on bail in this case.....'

8. Adverting to the aforementioned portion, learned counsel submits that the similar case being 'bail order dated 12.09.2022 in Cr.M.P.No. 3863/2022 on the file of Principal District and Sessions Judge, Tiruchirappalli' [hereinafter '**Bharathi case bail order**' for the sake of convenience] has been furnished to the detenu as part of the grounds booklet. Adverting to **Bharathi's case** bail order, learned counsel submitted that in **Bharathi's case**, the Public Prosecutor himself has represented that no previous case is pending against the petitioner whereas in the case on hand, even according to the impugned preventive detention order, there are three adverse cases. Learned counsel also pointed out that in **Bharathi's case**, the petitioner is a student and that has weighed in the mind of the bail Court and this has been captured in **Bharathi's case** bail order itself. This Court had the benefit of perusing **Bharathi's case** bail order and the submissions are beyond any realm of dispute.



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9. Be that as it may, learned Additional Public Prosecutor submitted that the alleged offences in *Bharathi's case* and the case on hand are broadly comparable.

10. We have carefully considered the rival submissions.

11. This Court has repeatedly held that when it comes to similar case point, it is not merely a comparison of alleged offences but it is a comparison of determinants/parameters that has weighed in the mind of the bail Court in granting bail. In this view of the matter, we find that at least two points which have weighed in the mind of the bail Court in Bharathi's case viz., there is no previous case against the petitioner and that the petitioner is a student are unavailable in the case on hand. This means that the comparison is flawed. This further means that the subjective satisfaction qua imminent possibility of detenu being enlarged on bail based on such flawed comparison is impaired. Therefore, we have no hesitation in sustaining the argument of learned counsel for petitioner.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 10.07.2023 bearing C.No.



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67/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Kirubakaran, aged 23 years, son of Thiru Josi, 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.)
20.11.2023

Index : Yes

Neutral Citation : Yes

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Post Script:

(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

(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.



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

vsm

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Thiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Trichirappalli Central Prison,
Tiruchirappalli.
- 4.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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