



HCP(MD)No.1074 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1074 of 2023

T.Gomathi

: Petitioner

Vs.

1.State of Tamil Nadu,

Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,

Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,

Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl.No. 76/2023 dated 31.07.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Pravin, aged about 25 years S/o. Vijayakumar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

O R D E R

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

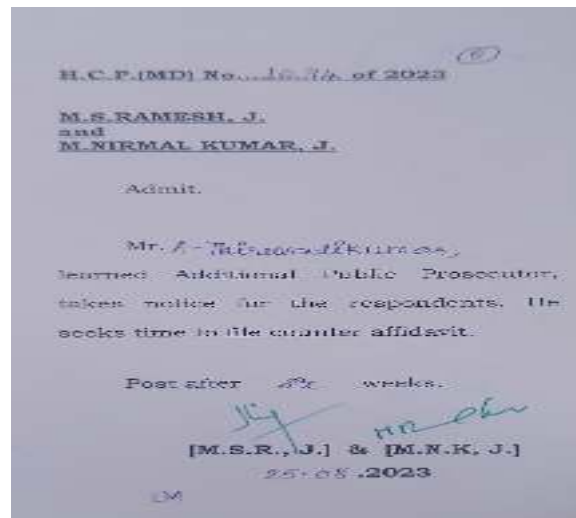
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 25.08.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



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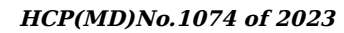


2.It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.

3.Today, captioned matter is in the Final Hearing Board.

4.Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all respondents are before us.

5.Captioned HCP has been filed by mother of the detenu assailing a 'preventive detention order dated 31.07.2023 bearing reference M.H.S.Confdl.No.76/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience].



6. Impugned preventive detention order has been made under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Law Offenders, Drug-Offenders, Forest-Offenders, Goondas, Sexual Traffic Offenders, Sand-Offenders, Sexual-Offenders, Slum-Dwellers 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.

7. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No. 71 of 2023 on the file of Moondradaippu Police Station for alleged offences under Sections 427, 395 and 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and



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clarity] which was subsequently altered into Sections 427, 395, 397 and 120-B of IPC. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8.In the support affidavit several points have been raised but Mr.N.Pragalathan, learned Counsel for HCP petitioner in the final hearing predicated his campaign against the impugned preventive detention order on one point ie., non-application of mind *qua* detaining authority.

9.In support of this argument, learned Counsel drew our attention to paragraphs 3 and 4 of the grounds of impugned preventive detention order which read as follows:

'3.திரு.பிரவீன் என்பவர் முன்றடைப்பு காவல் நிலைய குற்ற எண்.71/2023ன் தொடர்பாக 03.07.2023 அன்று கைது செய்யப்பட்டு நான்குநேரி நீதித்துறை நடுவர் முன்பு ஆஜர்படுத்தப்பட்டு, பாலையங்கோட்டை மத்திய சிறையில் காவல் சிறைவாசியாக அடைக்கப்பட்டுள்ளார். ஆவரது காவல் அடைப்பு 11.08.2023ல் முடிவடைகிறது. இந்திய தண்டனை சட்டப்பிரிவு 427, 395, 397 சட்டத்தின் கீழ் இழைக்கப்படும் குற்றங்கள் சொத்துகளுக்கு எதிரானவை அந்த வகையில் இந்திய தண்டனை சட்டம் பாகம் 17ன் கீழ் தண்டிக்கப்படத்தக்கதாகும்.



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4.ஆவணங்களை பரிசீலனை செய்ததிலிருந்து திரு.பிரவீன் என்பவர் கொடுங்குற்றங்கள் புரிந்தும் அதன் மூலம் பொது ஒழுங்கு பராமரிப்பிற்கு குந்தகமான வகையில் செயல்பட்டு வருகிற காரணத்தால் அவர் தமிழ்நாடு சட்டம் 14 /1982 பிரிவு 2 (எப்)ல் குறிப்பிடப்பட்டுள்ளபடி ஒரு “குண்டர்” ஆவார் என்பதை நான் மனதார அறிகிறேன். மேற்சொன்ன கொடுங்குற்றத்தை பகல் நேரத்தில் பரபரப்பான பொது இடத்தில் புரிந்ததன் மூலம் அந்தப்பகுதிவாழ் மக்களின் மனதில் பீதியையும், பாதுகாப்பற்ற உணர்வையும் ஏற்படுத்தி, அதன் மூலம் பொது ஒழுங்கு பராமரிப்பிற்கு குந்தகமான வகையில் செயல்பட்டுள்ளார்.’

10.Adverting to the aforementioned two paragraphs in the grounds of impugned preventive detention order, learned Counsel submitted that the entire substratum of the grounds of impugned preventive detention order is constituted by a solitary case but in paragraph No.4 the detaining authority has written that on examination of documents it comes to light that the detenu has committed heinous offences [to be noted 'offences' in plural]. This is a clear case of non-application of mind is learned Counsel's say.

11.In response to the aforementioned arguments learned Prosecutor drew our attention to paragraph No.4 and submitted that in the second sentence 'கொடுங்குற்றம்' has been set out in singular.



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12.We carefully considered the rival submissions.

13.We are inclined to sustain the submission of learned Counsel for HCP petitioner as in the same paragraph ie., paragraph No.4 in one breath the detaining authority refers to 'கொடுங்குற்றம்' in singular ie., the solitary case which constitutes the substratum of the impugned preventive detention order and in the same breath in the same paragraph refers to 'கொடுங்குற்றங்கள்' in plural. Therefore it cannot be a mere typographical error. It is a positive articulation by the detaining authority on examination of documents ie., 'ஆவணங்களை பரிசீலனை செய்ததிலிருந்து' it comes to light that the detenu has committed 'கொடுங்குற்றங்கள்' in plural and that has been made the basis for clamping the impugned preventive detention order. Therefore, we sustain the submission of learned Counsel for HCP petitioner and interfere with the impugned preventive detention order. The impugned preventive detention order deserves to be dislodged in the habeas legal drill on hand.

14.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.07.2023 bearing reference



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M.H.S.Confdl.No.76/2023 made by the second respondent is set aside and the detenu Thiru.Pravin, aged 25 years, son of Thiru.Vijayakumar, 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.]

04.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned are 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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To

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State of Tamil Nadu,
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2.The District Collector and District Magistrate,
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Tirunelveli.

3.The Superintendent of Prison,
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Tirunelveli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

ORDER MADE IN
H.C.P.(MD)No.1074 of 2023

04.12.2023