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*Crl. M.P.No.1328 of 2023
in H.C.P.No.2374 of 2022*

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M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned 'Criminal Miscellaneous Petition' [hereinafter 'Crl MP'

for the sake of convenience and clarity] has been filed to fix an early date for final hearing of the aforementioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] being HCP No.2374 of 2022.

2. Mr.A.Sankarasubbu, learned counsel on record for petitioner is before us and the petitioner is wife of detenu.

3. Learned counsel for petitioner submitted that in the main HCP a 'detention order dated 04.11.2022 bearing reference No.C3/D.O./32/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'jurisdictional District Collector i.e., second respondent' [hereinafter 'Detaining Authority' for the sake of brevity and



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convenience] has been called in question. In and by impugned detention order, the detenu Thiru.Senthamizhmurugan, aged 44 years, son of Thiru.Vengadapathi residing at Ammankoil Street, Kambalimedu Village, Alappakkam Post, Cuddalore Taluk, Cuddalore District has been detained on the premise that he is a 'Goonda' within the meaning of 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].

4. Mr.R.Muniyapparaj, learned Additional Public Prosecutor who accepts notice on behalf of all five respondents is before us.

5. Learned counsel for petitioner submitted that the detenu is an elected representative of people having been directly elected by people as Panchayat President of Alappakkam Village in Cuddalore District.



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6. We are informed that the detenu is a representative of 5000 and odd citizenry, his incarceration owing to clamping of the impugned detention order is preventing him from discharging his duties as elected representative having been duly elected directly by citizenry in and by a electoral process is learned counsel's say. To be noted, this is the ground on which the captioned matter to fix an early date is predicated.

7. In response to the above submission, learned Additional Public Prosecutor submits that there is one adverse case (Crime No.392 of 2022 dated 07.08.2022) and one ground case (Crime No.467 dated 22.10.2022) both on the file of fifth respondent. To be noted fifth respondent is the Sponsoring Authority qua impugned detention order. Learned Additional Public Prosecutor submits that alleged offences are *inter alia* under Sections 395 and 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and there is a law and order problem. Learned Additional Public Prosecutor submits that there is law and order problem. On this ground, learned Additional Public Prosecutor vehemently and strongly opposed the prayer.



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8. Learned counsel for petitioner advertent to ***A.K.Gopalan*** case [***A.K.Gopalan Vs. The District Magistrate and another reported in 1949 CriLJ 843***] (to be noted, ***A.K.Gopalan*** case decided by Madras High Court) submitted that the captioned Crl MP is only to fix an early date and the impugned detention order has to be tested on its merits and it has to pass the muster. If the impugned detention order is bad, there cannot be even one minute detention is learned counsel's emphatic say. Learned counsel for petitioner submitted that 'law and order' issue is no argument in a legal drill of testing a preventing detention order as it has to be a public order issue.

9. Notwithstanding bipolar opposite submissions which the learned counsel for petitioner and learned Additional Public Prosecutor have taken, we are inclined to fix Monday week (20.02.2023) as the date for final hearing of main HCP solely on the ground that the detenu is an elected representative and we are going to test the impugned detention order on its merits as it is done in the case of any other detenu while



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testing the impugned detention order, we will go into the question of whether it is a mere law and order issue or if it has got escalated into a public order issue as it will be part of legal drill in the main HCP.

10. Owing to the fact that the detenu is an elected representative representing 5000 odd citizenry in the first tier of democracy, prayer in the captioned Crl MP acceded to by fixing 20.02.2023 as the date to hear out the main HCP.

Accordingly, Crl MP ordered as prayed for. There shall be no order as to costs.

**[M.S.J.] [M.N.K.J.,]
10.02.2023**

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