



HCP(MD)No.359 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

H.C.P.(MD)No.359 of 2023

Kaamil Mahamed Labbai

: Petitioner

Vs.

1.State represented by,

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

2.The Commissioner of Police,

Office of the Commissioner of Police,
A.R. Line Road, Koripallam,
Palayamkottai,
Tirunelveli City,
Tirunelveli.



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3.The Superintendent of Prison,

Central Prison,

Palayamkottai,

Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records from the second respondent in No.12/BCDFGISSSV/2023 dated 27.02.2023 by setting aside the said order of detention passed by the second respondent and setting the detinue Kuthubun Najeep S/o. Mohamed Lebbai, aged about 47 years at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity].



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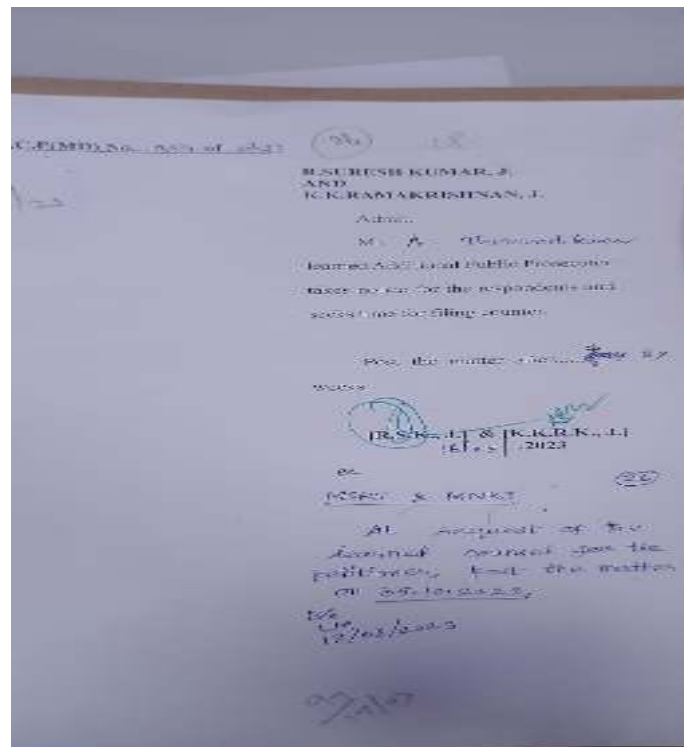
2.Captioned HCP has been filed in this Court on 13.03.2023, assailing the Preventive Detention Order dated 27.02.2023 bearing reference No.12/BCDFGISSSV/2023 made by the second respondent Commissioner of Police, Tirunelveli City ['Commissioner of Police' shall hereinafter be referred to as 'detaining authority' for the sake of convenience]. The 27.02.2023 preventive detention order bearing reference No.12/BCDFGISSSV/2023 made by the detaining authority shall hereinafter be referred to as 'impugned preventive detention order', for the sake of convenience and clarity. To be noted, in and by the impugned preventive detention order, the HCP petitioner's father one Kuthubun Najeep has been detained branding him as a 'Sexual Offender' within the meaning of Section 2(ggg) 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].

3.When the captioned HCP was in the admission board, followed by another listing on 18.08.2023, the following orders were made by



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Hon'ble Coordinate Division Benches. The scanned reproduction of the said orders are as follows:



4.Today, in the final hearing, Mr.K.Prabhu, learned Counsel on record for HCP petitioner who is before us submitted that though very many grounds have been raised in the support affidavit, he would predicate his campaign against the impugned preventive detention order on one point and that one point turns on non-supply of copy of a bail petition *qua* a bail order which has been relied on by the detaining authority to arrive at a subjective satisfaction as regards imminent possibility of the detainee being enlarged on bail.



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5. Learned Counsel drew our attention to a portion of paragraph No.5 of the impugned preventive detention order and the same reads as follows:

'5. In a case with few sections of law similar o the ground case, registered in Palayamkottai All Women Police Station Cr.No. 6/2022 under Section 9(m), 10, 11(1), 11(3) read with 12 of POCSO (Protection of Children from Sexual Offences) Act 2012 and section 506(i) IPC, accused Vimal Bose S/o Bose was granted bail by the Hon'ble Madurai Bench of Madras High Court in Crl.O.P.(MD) No.7195/2022 dated 19.04.2022.

Hence I infer that it it very likely of Thiru.Kuthubun Najeep's coming out on bail in the case in Palayamkottai All Women Police Station Cr.No.3/2023, through the pending bail application since bail is granted by courts in such cases.'

[Extracted as such]

6.Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned Counsel submitted that a representation dated 07.03.2023 was sent and in that



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representation, a specific request was made to furnish the bail petition in aforementioned **Vimal Bose's** case but the same was not furnished to the detainee.

7. According to learned Counsel for the petitioner, this has afflicted the rights of the detainee to make an effective representation and therefore, the impugned preventive detention order deserves to be dislodged.

8. In response to the above, learned State Additional Public Prosecutor submitted to the contrary that the bail order as well as the Tamil translation of the bail order in **Vimal Bose's** case have been furnished to the detainee as part of the grounds booklet.

9. We carefully considered the rival submissions.

10. We find that the detainee has made a request with specificity vide representation dated 07.03.2023 which is before us, requesting for a copy of the bail order.



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11. Subjective satisfaction arrived at by the detaining authority while making the impugned preventive detention order with respect to the imminent possibility of detainee being enlarged on bail is very significant and therefore, in our considered view it is imperative that the bail order which has been relied on for arriving at such subjective satisfaction is very significant and all attendant documents if sought for has to be furnished. In the case on hand, the detainee has sought for a bail order with specificity but the said request has not been acceded to.

12. The narrative, discussion and dispositive reasoning thus far makes it clear that the rights of the detainee to make an effective representation has been impaired. Further, right of a detainee to make an effective representation *qua* a preventive detention order is a sanctus Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the instant case this Constitutional safeguard has been breached. The sequitur is, the impugned preventive detention order deserves to be dislodged in the habeas legal drill at hand.



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13.Be that as it may, in identical circumstances in another HCP petition before us ie., H.C.P.(MD)No.644 of 2023, we had interfered with the impugned preventive detention order and dislodged the same in and by an order dated 03.10.2023.

14.The sum sequitur is the case on hand is also one where the impugned preventive detention order deserves to be dislodged.

15.Ergo, sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.02.2023 bearing reference No.12/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Kuthubun Najeep, male, aged 47 years, son of Thiru.Mohamed Lebbai, 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.K.M.,J.]
05.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

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



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To

- 1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
A.R. Line Road, Koripallam,
Palayamkottai,
Tirunelveli City,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.
and
R.KALAIMATHI, J.

MR

ORDER MADE IN
H.C.P.(MD)No.359 of 2023

05.10.2023