



H.C.P(MD)No.621 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM :

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

H.C.P(MD)No.621 of 2023

P.Vijayalakshmi

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
2. The District Magistrate and District Collector,
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.
4. The Inspector of Police,
Vickramasingapuram (VK Puram) Police Station,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the second respondent in Detention Order in M.H.S.Confdl.No.36/2023 dated 03.04.2023 and to quash the same and direct the respondents to produce the body or person of the detenu, Prabhu, s/o.Otchappan @ Otchappa Thevar aged about 41 years



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before this Hon'ble Court and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner	: Mr.V.M.Jegadeeshapandian
For Respondents	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor

ORDER

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

In the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] a 'preventive detention order dated 03.04.2023, bearing reference M.H.S.Confdl.No.36/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent i.e. Jurisdictional District Collector/District Magistrate' [hereinafter 'Detaining Authority' for the sake of convenience] has been assailed by the wife of the detenu.

2. When the captioned HCP was listed in the 'Admission Board' on 17.05.2023, the following order was made by a Hon'ble Coordinate Bench and a scanned reproduction of the proceedings of Hon'ble Coordinate Bench dated 17.05.2023 is as follows:



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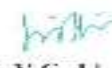
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THE HON'BLE ACTING CHIEF JUSTICE
AND
L.VICTORIA GOWRIJ

Admit.

2.Mr.S.Ravi, learned Additional Public
Prosecutor, takes notice on behalf the
respondents.

3.Post the matter after four weeks for
filing counter.

 
[T.R., A.C.J.] [L.V.G.,J.]
17.05.2023

MTR

3. Thereafter, there was one listing on 03.10.2023 and a scanned reproduction of the proceedings dated 03.10.2023 is as follows:

List on 03.10.2023

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

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

When the matter was taken up,
Mr.V.M.Jegadeeshapandian, learned counsel on
record for petitioner requests for a short adjournment.
Request acceded to.

2, List on 12.10.2023.

 
[M.S.J.] [R.S.V.J.]
03.10.2023

ps



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4. Today, in the final hearing board, Mr.V.M.Jegadeeshapandian, learned counsel for HCP petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for all the four respondents are before us. To be noted, the fourth respondent is the Sponsoring Authority. It is also to be noted that the impugned preventive detention order has been made by the Detaining Authority under Section 2(e) 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], branding the detenu as 'Drug Offender'.

5. From the submissions made by both sides and from the perusal of case file, it comes to light that the impugned preventive detention order is predicated on a solitary case, namely, Crime No.62 of 2023 on the file of Vickramasingapuram (VK Puram) Police Station for alleged offences under Sections 8(c), 20(b)(ii)(A) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of brevity] and subsequently altered as Section 328 of the 'Indian Penal



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Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity]
read with Section 8(c), 20(b)(ii)(A), 20(b)(ii)(C) and 29(I) of NDPS Act.

6. The prayer for remand made by the sponsoring authority on 09.03.2023 makes a clear reference to four previous cases *qua* the detenu but the impugned preventive detention order which has adverted to the remand pursuant to the remand prayer made on 09.03.2023 has clamped the impugned preventive detention order by predicating the same on a solitary case as already alluded to *supra*. This means that this is a case of non-application of mind *qua* Detaining Authority and therefore, the impugned preventive detention order is vitiated.

7. As the aforementioned point turns heavily on facts, learned Additional Public Prosecutor really does not have much of a say.

8. We are acutely conscious of the fact that when a preventive detention order is vitiated on one point it may not be necessary to advert to other points at least as far as Act 14 of 1982 is concerned. However, in this case we noticed one more point and we deem it appropriate to set out the same. The impugned preventive detention order refers to bail order in one Vineet's case and refers to the same to arrive at subjective



satisfaction *qua* imminent possibility of detenu being enlarged on bail but in the grounds booklet served on the detenu, the first page of this bail order is missing and only the second page of this bail order has been furnished to the detenu. Responding to this point, learned Additional Public Prosecutor pointed out that the Tamil translation of this bail order has been given to the detenu in full.

9. We considered the rival submissions and find that Tamil translation being given in full does not save the day as two bail orders that too in a matter which the detenu is not connected with one in English as made by the Sessions Judge and another Tamil translation with different contents or at least with a missing page can baffle a detenu. A detenu being baffled means that the right to make an effective representation is impaired. This Court has repeatedly held that the detenu has a right to make an effective representation against a preventive detention order and such right is a sanctus constitutional safeguard ingrained in clause (5) of Article 22 of Constitution of India and breach of the same vitiates the preventive detention order. Applying this principle, we have no difficulty in saying that the impugned preventive detention order is vitiated on this ground also.



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10. In the light of the narrative discussion and dispositive reasoning set out supra, the impugned preventive detention order deserves to be dislodged in this habeas legal drill at hand.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.04.2023 bearing reference M.H.S.Confdl.No.36/2023 made by the second respondent is set aside and the detenu Thiru.Prabu, aged 41 years, son of Thiru.Otchappan alias Otchappa Thevar, 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.)
12.10.2023

Index : Yes
Internet : Yes
Neutral Citation : Yes
PKN

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



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To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
2. The District Magistrate and District Collector,
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.
4. The Inspector of Police,
Vickramasingapuram (VK Puram) Police Station,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

PKN

ORDER MADE IN
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12.10.2023