



H.C.P(MD)No.665 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

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

H.C.P(MD)No.665 of 2023

Subashini

... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3. The Superintendent,
Central Prison,
Tiruchirappalli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the order made in C.O.C.No.16/2023 dated 17.04.2023 on the file of the 2nd respondent and quash the same and consequently direct the respondents to produce the petitioner's son namely, "Ajith @ Ajithkumar, S/o.Ambethkar, aged about 27 years" who is now detained as a detenu at Central Prison, Tiruchirappalli or his corpus or body before this Court and set him at liberty forthwith.



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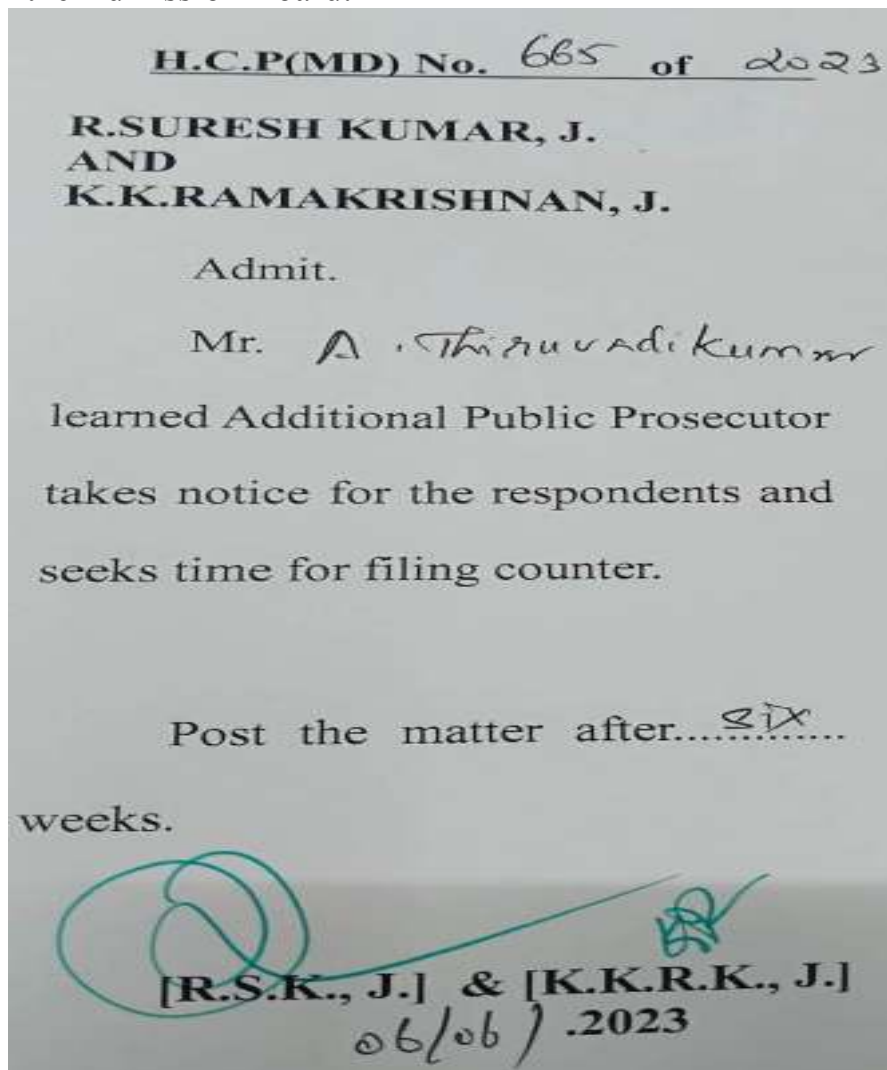
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For Petitioner : Mr.J.Sankara Pandian
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[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 06.06.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order in the Admission Board:





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, the captioned matter is in the Final Hearing Board.

4. Mr.J.Sankara Pandian, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 17.04.2023 bearing reference C.O.C.No.16/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Kilvelur Police Station, is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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6. Impugned 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.

7. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.193 of 2023 on the file of Kilvelur Police Station, for alleged offences under Sections 448, 294(b), 506(ii), 285 and 436 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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. Though several points have been raised in the support affidavit qua captioned HCP, in the final hearing board, learned counsel



for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail *inter alia* on the basis that detenu's mother is taking steps is without any supporting material. Relevant portion is paragraph 4 of the grounds of the impugned preventive detention order which reads as follows:

'4. The sponsoring authority has stated that Tmt.Subashini, W/o.Ambethkar, mother of the detenu Ajith @ Ajithkumar, Male, Aged 27/2023, S/o. Ambethkar, is taking steps to take him out on bail by filing bail application for the ground case before the appropriate court.

.....

However, in similar case (i.e) (1) Crime Number 1755/2020 under Section 294(b), 341, 324, 307 of IPC, of Kilvelur Police Station, bail was granted by the Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.3494/2020 dated 05.01.2021 to an accused by name Thiru.Thiyagarajan, Male Aged 40/2020, S/o. Panchanathan and (2) In Crime Number 25/2023 under section 386, 506(ii) of IPC r/w 25(1A) Arms Act, 1959 of Kilvelur Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.341/2023, dated 30.01.2023 to an accused by name Thiru.Vijayaragavan, Male Aged 26/2023,



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S/o.Rajamurugan.

Hence, I infer that there is a real possibility of Thiru. Ajith @ Ajithkumar, Male, Aged 27/2023, S/o. Ambethkar coming out on bail by filing a bail application in the above case before the appropriate court and higher court. ...'

9. The above point turns heavily on record. Therefore, the Prosecutor does not have much of a say.

10. We considered the rival submissions. We find that there is neither a statement from the mother of the detenu nor a special report from the sponsoring authority. Therefore, we sustain the submission of the learned counsel for petitioner that subjective satisfaction *inter alia* on the basis that the detenu's mother is taking steps to file bail application is without any basis and therefore, the exercise of arriving at subjective satisfaction by the detaining authority is flawed. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.04.2023 bearing reference C.O.C.No.16/2023



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made by the detaining authority is set aside and the detenu Thiru.Ajith @
Ajithkumar, aged 27 years, son of Thiru.Ambethkar, 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.)
30.10.2023

Index : Yes / No
Neutral Citation : Yes / No
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**P.S: Registry to forthwith communicate this order to Jail authorities
in Central Prison, Tiruchirappalli.**

To

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

2. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3. The Superintendent,
Central Prison,
Tiruchirappalli District.

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



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5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

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ORDER MADE IN
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DATED : 30.10.2023