



HCP(MD)No.687 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.687 of 2023

Annamayil

: Petitioner

Vs.

1.State of Tamil Nadu, rep. By its
Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd respondent in his proceedings C.No. 41/detention/C.P.O/TC/2023 dated 08.05.2023 and quash the same and direct the respondents to produce the person or body of the detenu namely



HCP(MD)No.687 of 2023

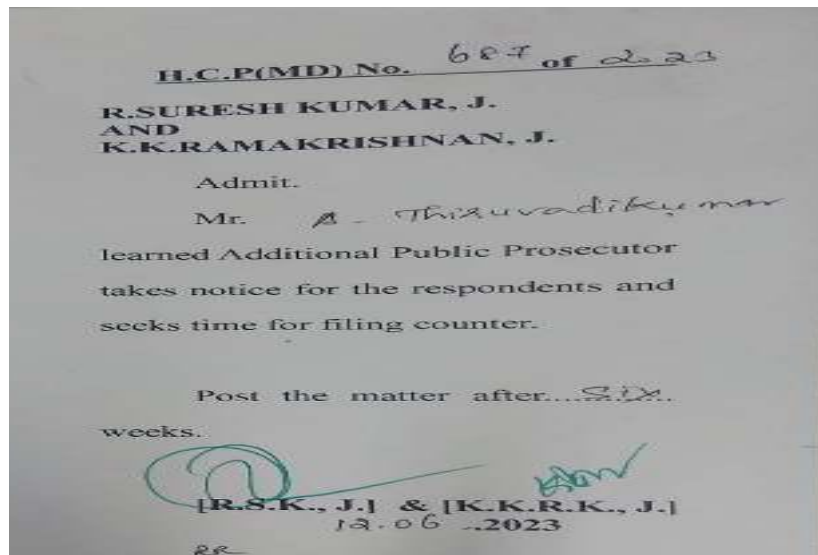
Selvaraj, S/o.Thiyagarajan aged 44 years (now detained at Central Prison, Trichy) before this Court and set him at liberty.

For Petitioner : Mr.N.Anandkumar
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 12.06.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





HCP(MD)No.687 of 2023

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.N.Anandkumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the wife of the detenu assailing a 'preventive detention order dated 08.05.2023 bearing C.No. 41/Detention/C.P.O/TC/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 but we find that 'Station House Officer of K.K.Nagar (Crime) Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



HCP(MD)No.687 of 2023

6. Impugned preventive 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 and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.191 of 2023 on the file of K.K.Nagar (Crime) Police Station registered under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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 *qua* captioned HCP though several points have been urged, in the Final Hearing Board learned counsel predicated his campaign against the impugned Preventive Detention Order on one point



HCP(MD)No.687 of 2023

and that one point turns on subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail.

9. Elaborating on the aforementioned point, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5.I am also aware that Selvaraj is in remand in K.K.Nagar Police Station Cr.Nos.115/2023, 191/2023 and Airport Police Station Cr.No.361 of 2023. He has filed bail petitions before the Judicial Magistrate No.2, Thiruchirappalli for K.K.Nagar Police Station Cr.Nos.115/2023 and 191/2023 vide Cr.M.P.Nos.12391/2023 and 12392/2023 respectively and before the Judicial Magistrate No.6, Thiruchirappalli for Airport Police Station Cr.No.361/2023 vide Cr.M.P.No.13236/2023 and the same are pending. In a similar case registered in Thanjavur District, Medical College Police Station Cr.No.1331/2021 u/s 392 IPC, bail was granted to the accused Ayyappan who was remanded on 24.12.2021 by the Judicial Magistrate No.II, Thanjavur in Cr.M.P.No.336/2022 dated 28.02.2022. Hence I infer that it is very likely of his (Selvaraj) coming out on bail in the above cases.....'



HCP(MD)No.687 of 2023

10. Adverting to the aforementioned portion of the grounds of impugned Preventive Detention Order, learned counsel submitted that Crime Nos.115/2023 and 191/2023 on the file of K.K.Nagar Police Station, Trichy are first adverse case and ground case respectively for an alleged offence of robbery. [To be noted, the offence of 'Robbery' under Section 390 IPC is punishable under Section 392 of IPC]. It was submitted that Crime No.361 of 2023 on the file of Airport Police Station, Trichy is the second adverse case for alleged offences under Sections 393, 394 and 511 IPC. It was pointed out that Section 394 IPC pertains to 'Voluntarily causing hurt in committing robbery'. Learned counsel submitted that the similar case that has been relied on by the Detaining Authority captured in the aforementioned portion of paragraph 5 of the grounds of impugned Preventive Detention Order pertains only to an alleged offence under Section 392 IPC and not Section 394 IPC.

11. In response to the aforementioned point, learned Public Prosecutor submitted that both Sections 392 and 394 IPC pertain to robbery and therefore, a broad comparison is permissible.



HCP(MD)No.687 of 2023

12. We have carefully considered the rival submissions.

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13. This Bench finds that Section 390 IPC defines 'Robbery' which is punishable under section 392 IPC and it calls for a maximum imprisonment i.e., Rigorous Imprisonment for a term which may extend to ten years but voluntarily causing hurt in committing robbery is an offence under Section 394 which has punishment of imprisonment for life in that section itself. Therefore, we are convinced that there is a difference between Section 390 IPC which is punishable under Section 392 IPC and Section 394 of IPC as section 394 is a graver offence.

14. In this view of the matter, the substratum of the impugned preventive detention order is constituted by one ground case and two adverse cases. The subjective satisfaction regarding imminent possibility of detenu being enlarged on bail has been arrived at by relying on one Ayyappan case where the alleged offence was Section 392 IPC. However, in the case on hand, the second adverse case was registered for the alleged offences under Sections 393, 394 and 511 of IPC. The punishment under Section 392 IPC is (maximum) ten years whereas punishment of



HCP(MD)No.687 of 2023

imprisonment for life can be imposed under section 394 IPC. Therefore comparison of Ayyappan case with the case on hand is a flawed exercise owing to which subjective satisfaction arrived at by the Detaining Authority is impaired. This means that the impugned Preventive Detention Order deserves to be dislodged in the habeas legal drill on hand.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.05.2023 bearing reference C.No. 41/Detention/C.P.O/TC/2023 made by the second respondent is set aside and the detenu Thiru.Selvaraj, male, aged 44 years, son of Thiru.Thiyagarajan, 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

vsm
Index : Yes
Neutral Citation : Yes

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



HCP(MD)No.687 of 2023

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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
 - 2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
 - 3.The Superintendent,
Central Prison,
Tiruchirappalli.
 - 4.Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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