



H.C.P(MD)No.718 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **30.10.2023**

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.718 of 2023

Eniko

.. Petitioner

VS

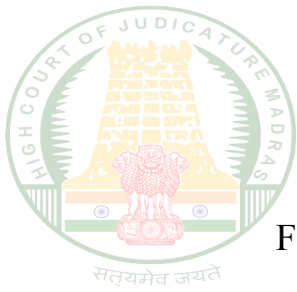
1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Tiruchirappalli.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order of the respondent No.2 in H.S(M).Confdl No.66/2023 dated 04.05.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Jeffrin, Son of Eniko, aged about 25 years, now detained as “Sexual Offender” at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.



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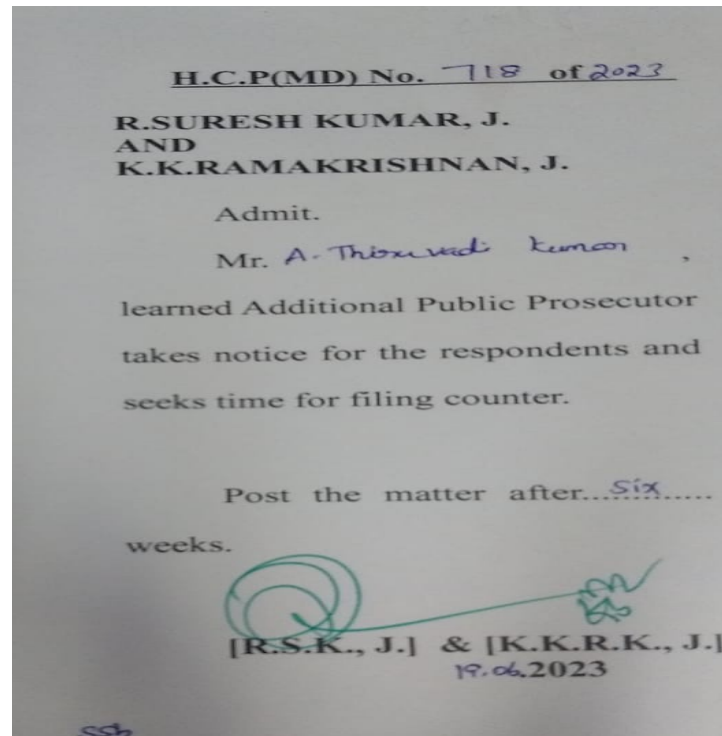
For Petitioner : Mr.P.Samuel Gunasingh

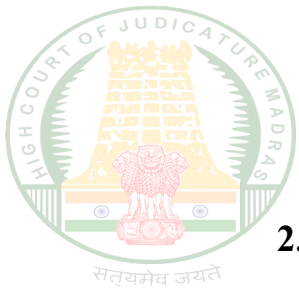
WEB COPY For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 19.06.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





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2. It has now become necessary to set out a thumb nail sketch of factual matrix and we do so in the paragraphs infra.

3. Today, the captioned matter is in the Fnal Hearing Board.

4. Mr.P.Samuel Gunasingh, 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 father of the detenu assailing a 'preventive detention order dated 04.05.2023 bearing H.S.(M)Confdl No.66 of 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 Tiruchendur All Women 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.

6. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.10 of 2023 on the file of Tiruchendur All Women Police Station registered under Sections 5(g) and 6 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity] and Section 67B Information Technology Act, 2000. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

8. Learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. To buttress this argument, learned counsel for petitioner drew our attention to a portion of

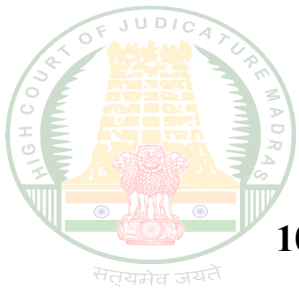


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paragraph 6 of the grounds of impugned preventive detention order which reads as follows:

'6.I am aware that the accused Jeffrin was arrested in the ground case on 11.04.2023 and he was produced before the Sessions Judge Special Court for Exclusive Trial of cases under POCSO Act, Thoothukudi on the same day and forwarded to Judicial custody up to 25.04.2023 and he is lodged in Thoothukudi District Jail at Perurani. Further his remand was extended up to 09.05.2023. I am also aware that accused Jeffrin has tried to file bail petition before the appropriate Court in the ground case registered in Tiruchendur All Women Police Station Cr.No.10 of 2023 u/s 5(g), 6 of POCSO Act 2012 and 67B IT Act 2000. I am also aware that in a similar case registered in Kadambur All Women Police Station Cr.No.06/20 u/s 354(A), 354(D), 323, 506(i) IPC 67 IT Act 2008 bail was granted by the Judicial Magistrate No.1, Court Kovilpatti to one Palavesam in Cr.M.P.No.1324/2020 dated 12.08.2020. Hence, I infer that it is very likely of his coming out on bail in the above case by filing bail petition before the appropriate Courts, since bails are granted by Courts in such cases.....'

9. Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 12.08.2020 made in Cr.M.P.No.1324 of 2020 on the file of Judicial Magistrate Court No.II, Kovilpatti' [hereinafter Palavesam's bail order for the sake of brevity].



10. Learned counsel for petitioner submitted that Palavesam's bail order has been furnished to the detenu as part of the grounds booklet and a careful perusal of the same brings to light that in Palavesam's case, he was not charged for POCSO offences, whereas in the case on hand, even according to the impugned preventive detention order there is POCSO offence. Therefore, the comparison is bad/flawed is learned counsel's say.

11. In response to the above argument, learned Prosecutor submitted to the contrary.

12. Learned Prosecutor submitted that the alleged offences in Palavesam's case and the ground case are broadly comparable.

13. We have carefully considered the rival submissions.

14. This Court has repeatedly held that as regards comparing a ground case with another case bail order it is not merely the alleged offences but it is the determinants/parameters which weighed in the mind of the bail Court for granting discretionary relief of bail. In this view of the matter, it is clear that in Palavesam's case, one of the main determinants that has weighed in the mind of the bail Court to grant the discretionary relief of bail is, Palavasem



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was not charged for POCSO offence whereas in the case on hand even according to the impugned preventive detention order there is POCSO offence. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. If such subjective satisfaction is flawed, the consequence is the impugned preventive detention order gets vitiated and becomes liable for being dislodged in a habeas legal drill. This means that the impugned preventive detention order in the captioned HCP also 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 04.05.2023 bearing H.S(M)Confdl No.66 of 2023 made by the second respondent is set aside and the detenu Thiru.Jeffrin, aged 25 years, son of Eniko, 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, Palayamkottai.



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

vsm

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.
- 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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