



*HCP(MD)No.864 of 2023*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 31.10.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

**and**

**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**H.C.P.(MD)No.864 of 2023**

Subbulakshmi

: Petitioner

**Vs.**

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

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

3.The Superintendent of Prison,  
Central Prison,  
Palyamkottai,  
Tirunelveli.

: Respondents



**HCP(MD)No.864 of 2023**

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned Detention Order passed by the second respondent made in his proceedings in Detention Order H.S.(M)Confdl No.69/2023 dated 18.05.2023 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a 'Goonda' and quash the same and direct the respondents to produce the detenu namely Ramasamy, S/o.Subba Naicker, Male, aged 43 years, who is detained in Central Prison, Palayamkottai, Tirunelveli District, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.KA.Raama Krishnan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

### **O R D E R**

\*\*\*\*\*

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

When the matter was taken up, Mr.KA.Raama Krishnan, learned Counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor, are before us.

**2.**Both sides submitted that captioned matter is directly covered by ***Selvi's Case [R.Selvi Vs. State of Tamil Nadu]*** reported in



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**2023/MHC/4778** [Neutral Citation of the Madras High Court]. A scanned reproduction of the same is as follows:

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23/MHC/4778

H.C.P(MD)No. 1100 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

Comm

THE HON'BLE MR.JUSTICE MSUNDAR  
and  
THE HON'BLE MR. JUSTICE R.SAKTHIVEL

H.C.P(MD)No.1100 of 2023

R.Seivi ..... Petitioner

vs

1.State of Tamil Nadu,  
Rep. by the Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.

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

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

..... 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 passed in H.S.(M)Confid No.75/2023 dated 14.06.2023 on the file of the 2<sup>nd</sup> respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu

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namely the petitioner's husband i.e., Ramesh @ 2GB Ramesh aged about 28 years, S/o.Ganesan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

|                 |   |                                                      |
|-----------------|---|------------------------------------------------------|
| For Petitioner  | : | Mr.N.Pragalathan                                     |
| For Respondents | : | Mr.A.Thiruvadi Kumar<br>Additional Public Prosecutor |

#### **ORDER**

{Order of the Court was made by M.SUNDAR, J.}

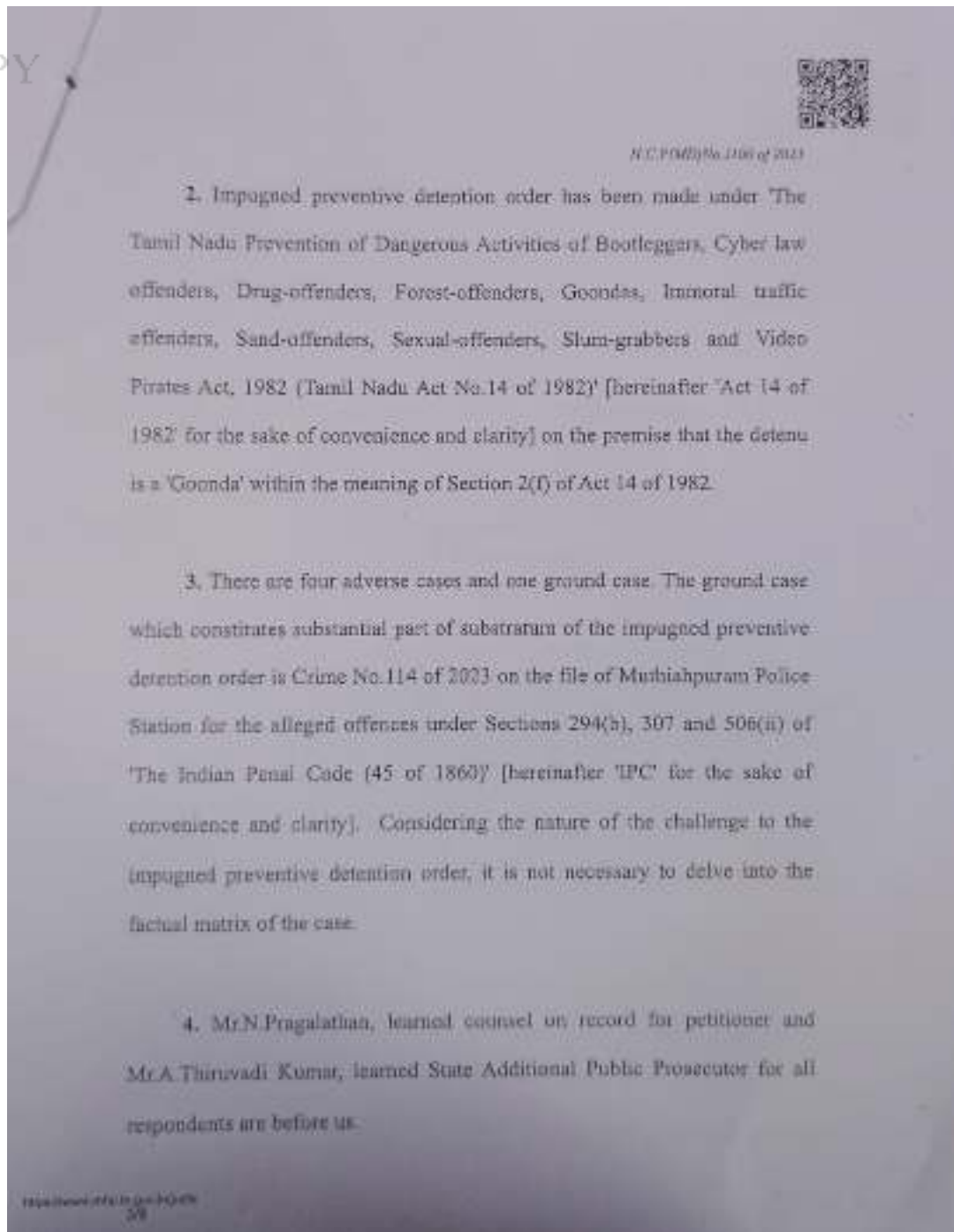
Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the wife of the detenu assailing a 'preventive detention order dated 14.06.2023 bearing H.S.(M).Confid. No.75 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of 'Muthiahpuram 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.

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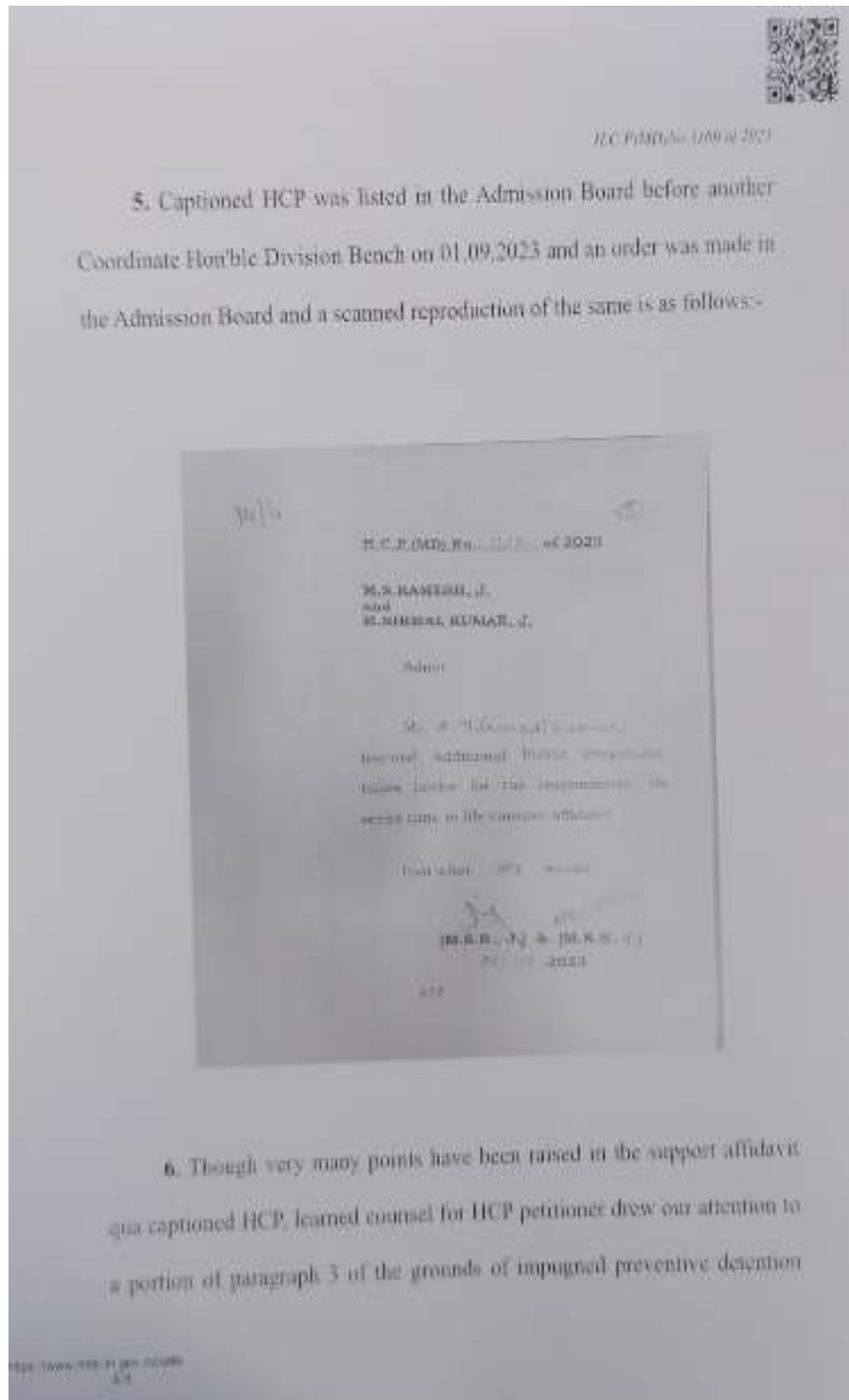




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order, which reads as follows:

3..... *The offence committed by the accused Ramesh @ TGB Ramash under Sections 294(b), 307 and 506(ii) IPC relating to abused with filthy language in a public place, attempt to murder and criminal intimidation were punishable under Chapters XIV, XVI and XXII of the Indian Penal Code. He was produced before the Court of Judicial Magistrate No.II, Thoothukudi on 19.05.2023 and forwarded to judicial custody upto 03.06.2023 and lodged in Thoothukudi District Jail at Perambur. Further his remand was extended up to 22.06.2023. The case is under investigation."*

7. Adverting to the aforementioned portion, learned counsel for HCP petitioner submitted that the Detaining Authority has recorded the fact that the detenu was produced before Judicial Magistrate II, Thoothukudi. Though the Detaining Authority has relied on this remand aspect of the matter *qua* ground case in the impugned preventive detention order, the copy of the remand order has not been furnished to detenu. Learned counsel also submits that the detenu has sent a representation dated 25.08.2023 specifically requesting for the remand order but the same has not been furnished.

https://www.mhc.tn.gov.in/judis



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*H.C.Petition No 1100 of 2023*

8. In response to the aforementioned argument of learned counsel for HCP petitioner, learned State Additional Public Prosecutor submitted to the contrary. Learned Additional Public Prosecutor submitted that the remand order has been furnished. This means that reference of the learned Additional Public Prosecutor is to the order of extension up to 22.06.2023. This means that the original remand order remanding the detenu up to 03.06.2023 has not been furnished to the detenu. This in effect means that the right of the detenu to make an effective representation has been impaired. This Court has repeatedly held in a long line of authorities that right of the detenu to make an effective representation qua an impugned preventive detention order is a constitutional safeguard which has been ingrained in Clause (5) of Article 22 of Constitution of India and this Court has also held that impairment of constitutional right which is so sanctus that it vitiates an impugned preventive detention order. This is one such case where the right of the detenu to make an effective representation has been impaired vitiating the impugned preventive detention order and leaving it vulnerable for being dislodged in this habeas legal drill on hand.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.06.2023 bearing H.S.(M)Confil No.75

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of 2023 made by the second respondent is set aside and the detenu Thiru.Ramesh @ 2GB Ramesh, aged 28 years, son of Thiru Ganesan, 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.)  
18.10.2023

Index : Yes  
Neutral Citation : Yes  
vsn

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

To

- 1.The Additional Chief Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai – 600 009.
- 2.The District Collector and District Magistrate,  
Thoothukudi District,  
Thoothukudi.
- 3.The Superintendent of Prison,  
Central Prison,  
Palayamkottai,  
Tirunelveli.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**3.**As there is no disputation that the point is identical and as there is no contestation that the captioned matter is covered by **Selvi's** case, we only remind ourselves of the age old adage 'Sauce to goose is sauce to gander too' and say that captioned HCP will also stand allowed on the same point ie., point in **Selvi's** case.

**4.**Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 18.05.2023 bearing reference H.S. (M)Confdl. No.69/2023 made by the second respondent is set aside and the detenu Thiru.Ramasamy, male, aged 43 years, son of Thiru.Subbiah Nayakkar 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.]**  
**31.10.2023**

Index : Yes

Internet : Yes

Neutral Citation : Yes

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 the Government,  
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Madurai Bench of Madras High Court,  
Madurai.



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

MR

**ORDER MADE IN**  
**H.C.P.(MD)No.864 of 2023**

**31.10.2023**