



HCP(MD)No.879 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.879 of 2023

Ayyammal

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector cum District Magistrate,
Theni District,
Theni.

3.The Superintendent of Prison,
Central Prison,
Madurai.



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4.The Inspector of Police,
Gandamanur Vilakku Police Station,
Theni District.

: 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 second respondent in Detention Order No.28/2023 dated 16.03.2023 and to quash the same and direct the respondents to produce the body or person of the detenu ie., Nandakumar (aged 21), S/o.Muthukumar, before this Court and set her at liberty now detained at Central Prison, Madurai.

For Petitioner : Ms.S.Prabha
for Mr.S.Arokiya Selva Ramesh
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity].

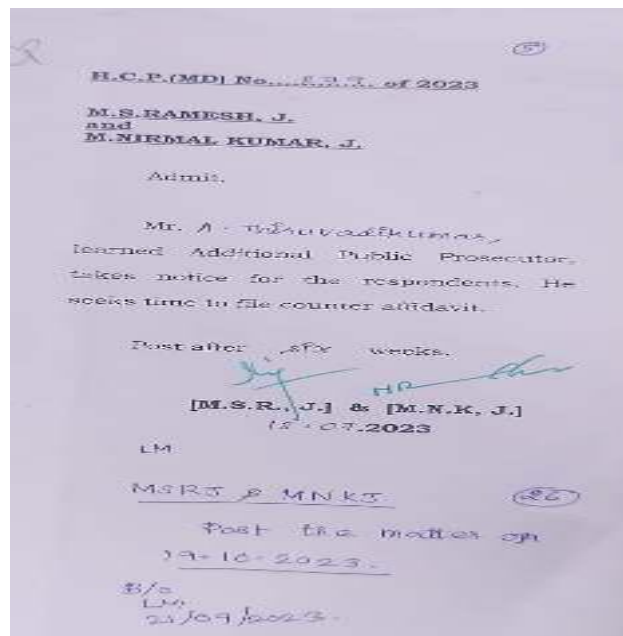
2.Captioned HCP has been filed by the mother of the detenu assailing a 'preventive detention order dated 16.03.2023 bearing



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reference Detention Order No.28/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent District Collector, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, Inspector of Police, Gandamanur Vilakku Police Station [fourth respondent] is the sponsoring authority.

3.Captioned HCP was listed in the admission board on 18.07.2023 and thereafter there was one listing on 21.09.2023. Orders made by Hon'ble Predecessor Coordinate Bench in the admission board and the subsequent listing on 21.09.2023 are as follows:





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4.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] branding the detenu as a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

5.There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.27 of 2023 on the file of Gandamanur Vilakku Police Station for the alleged offence under Section 376 (2)(K) 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.

6.Today, Ms.S.Prabha, learned Counsel representing the Counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned



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State Additional Public Prosecutor for all the respondents are before us.

7. In the support affidavit *qua* captioned HCP several grounds have been raised, but learned representing Counsel for petitioner predicated her campaign against the impugned preventive detention order on the ground that subjective satisfaction arrived at by the detaining authority is flawed.

8. Reiterating the point that is being canvassed, in the final hearing board, learned Counsel for HCP petitioner drew our attention to a portion of paragraph No.5 of the grounds of detention in the impugned preventive detention order and the same reads as follows:

'5. ... But a secret information has been received that he or his relatives may file a bail petition again before the competent court very soon. Hence, I infer that there is a real possibility of granting bail in the competent Courts after a lapse of time. ...'

9. Adverting to the aforementioned portion, learned Counsel submitted that there is no document to support the secret information said to have been received by the detaining authority. Therefore, the



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subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of detenu being enlarged on bail is flawed, is learned Counsel's say.

10.In response to the above argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the information would have been from the sponsoring authority.

11.We carefully considered the rival submissions.

12.We are not really concerned with the source of the information. This HCP Court in this HCP legal drill is only concerned with the manner in which the subjective satisfaction is arrived at by the detaining authority. To be noted, there is no disputation or contestation that there is no support material as regards aforementioned subjective satisfaction which has been extracted and reproduced supra. Absent material, the subjective satisfaction is clearly in the abstract. This means that this Court has no hesitation in sustaining the submission of the learned Counsel for HCP petitioner that subjective satisfaction arrived at by the detaining authority as



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regards the imminent possibility of detenu being enlarged on bail is flawed. This further means that impugned preventive detention order gets vitiated and becomes liable for being dislodged in the habeas legal drill on hand.

13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.03.2023 bearing reference Detention Order No.28/2023 made by the second respondent is set aside and the detenu Thiru.Nandhakumar, son of Thiru.Muthukumar, aged 21 years, 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.]
19.10.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

MR

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



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To

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Home Prohibition and Excise Department,
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Theni.

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4.The Inspector of Police,
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4.The Additional Public Prosecutor,
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.879 of 2023

19.10.2023