



HCP(MD)Nos.878 & 890 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

H.C.P.(MD)Nos.878 & 890 of 2023

Manikandan : Petitioner in H.C.P.(MD)No.878/2023

Marimuthu : Petitioner in H.C.P.(MD)No.890/2023

Vs.

1.The State of Tamil Nadu,

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

2.The District Magistrate and District Collector,

Thoothukudi District,
Thoothukudi.

3.The Superintendent,

Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents in all HCPs



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PRAYER in H.C.P.(MD)No.878 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M) Confdl No.59/2023 dated 12.04.2023 on the file of the second respondent and quash the same and direct the respondents to produce the detenu or body of the detenu namely Manikandan aged about 23 years S/o.Nagalingam, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.890 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M) Confdl No.60/2023 dated 12.04.2023 on the file of the second respondent and quash the same and direct the respondents to produce the detenu or body of the detenu namely Marimuthu aged about 24 years S/o.Murugesan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan
[In both H.C.Ps.]
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
[In all H.C.Ps]

COMMON ORDER

[Common order of the Court was made by M.SUNDAR, J.]

This common order will govern the captioned two 'Habeas Corpus Petitions' ['HCPs in plural and HCP in singular' for the sake of brevity, convenience and clarity]. H.C.P.(MD)No.878 of 2023 shall be referred to as I HCP and H.C.P.(MD)No.890 of 2023 shall be referred to as II HCP.

2.The detenues in the aforementioned two HCPs are co-accused in one ground case which constitutes a substantial portion of substratum of the impugned preventive detention orders which have been called in question in the captioned HCPs. Therefore, we are making a common order.



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3.Both I and II HCPs have been filed by respective detenus assailing the 'preventive detention orders dated 12.04.2023 bearing reference H.S.(M) Confdl No.59/2023 and H.S.(M) Confdl No.60/2023 respectively' [hereinafter 'impugned preventive detention orders' for the sake of brevity and convenience] made by the second respondent District Collector, Thoothukudi District, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Srivaikundam Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

4.Impugned preventive detention orders have 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 detenus as 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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5.The impugned preventive detention orders have been passed based on a ground case in Crime No.50 of 2023 on the file of Srivaikundam Police Station against the detainees for the alleged offence under Section 394 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 orders, it is not necessary to delve into the factual matrix of the case.

6.Today, Mr.N.Pragalathan, learned Counsel on record for petitioners in both HCPs. and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents in both HCPs are before us.

7.In the final hearing board, today, though very many points have been raised *qua* captioned HCPs, learned Counsel for HCP petitioners drew our attention to a portion of paragraph No.7 of the grounds of impugned preventive detention order *qua* I HCP, which reads as follows:

'7. I am aware that the accused Manikandan was arrested in the ground case on 16.03.2023 and produced before the Court of Judicial Magistrate Srivaikundam on the



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*same day and forwarded to judicial custody up to 30.03.2023
and lodged in Central Prison Palayamkottai. ...'*

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8.To be noted, the aforementioned portion of the grounds of impugned preventive detention order qua I HCP is *ad verbatim* the same in both impugned preventive detention orders.

9.Adverting to the above portion of the grounds of the impugned preventive detention orders, learned Counsel submitted that detaining authority has specifically relied on the fact that the detenues were arrested on 16.03.2023 in the ground case and produced before the jurisdictional Judicial Magistrate ie., Judicial Magistrate, Srivaikundam and was remanded to judicial custody up to 30.03.2023 by the learned Judicial Magistrate and lodged in Central Prison, Palayamkottai but the copies of this order of remand made by the learned Judicial Magistrate have not been furnished to the detenues.

10.Learned Counsel submitted that post serving of impugned preventive detention prders and the grounds booklet on the detenues, the detenues sent representations dated 07.07.2023 and in the representations *inter alia* the aforementioned remand order was



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specifically sought for. It was pointed out that the aforementioned remand order has not been furnished to the detenues as part of the grounds booklet. Though the detenues have specifically raised this point and sought for the copies of the remand order ie., remand order dated 16.03.2023 has not been furnished to the detenues and this has impaired the detenues' rights to make an effective representation is learned Counsel's say. This has further vitiated the impugned preventive detention orders is learned Counsel's further say.

11.In response to the aforementioned arguments, learned State Additional Public Prosecutor submitting to the contrary, pointed out that the detenues are well aware that they were arrested and remanded to judicial custody on 16.03.2023. Learned Prosecutor pointed out that they are also aware that the copies of the remand orders have not been furnished to them in the grounds booklet.

12.We carefully considered the rival submissions.

13.As regards the documents that are relied upon by detaining authority to clamp impugned preventive detention orders, it is important that the documents that have been relied upon by the



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detaining authority are furnished to the detenues so that the detenues are able to make effective representation as against the impugned preventive detention orders as such right is a sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of India. Violation or breach of the constitutional safeguard vitiates the impugned preventive detention orders and leaves the impugned prevention detention orders vulnerable for being dislodged in a habeas legal drill.

14.In the case on hand, the vulnerability is multiplied many times as the detenues have specifically pointed out that remand orders have not been furnished and despite their representations the remand orders dated 16.03.2023 have not been furnished to the detenues. This means that this is a fit case to sustain the submission of the learned Counsel for petitioners and dislodge the impugned preventive detention orders in these habeas legal drills.

15.Ergo, the sequitur is:

i) Captioned I HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference H.S.(M)Confdl No.59/2023 made by the



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second respondent is set aside and the detenu Thiru.Manikandan, son of Thiru.Nagalingam, aged 23 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

ii) Captioned II HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference H.S.(M)Confdl No.60/2023 made by the second respondent is set aside and the detenu Thiru.Marimuthu, son of Thiru.Murugesan, aged 24 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.K.M.,J.]

05.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

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



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To

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

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

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

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



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M.SUNDAR, J.
and
R.KALAIMATHI, J.

MR

COMMON ORDER MADE IN
H.C.P.(MD)Nos.878 & 890 of 2023

05.10.2023