



H.C.P(MD)No.883 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.883 of 2023

Balavignesh

.. Petitioner

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
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 of the respondent No.2 in H.S.(M) Confdl No.70/2023 dated 29.05.2023 and quash the same and direct the respondents to produce the detenu by name Balavignesh, son of Karuppasamy aged about



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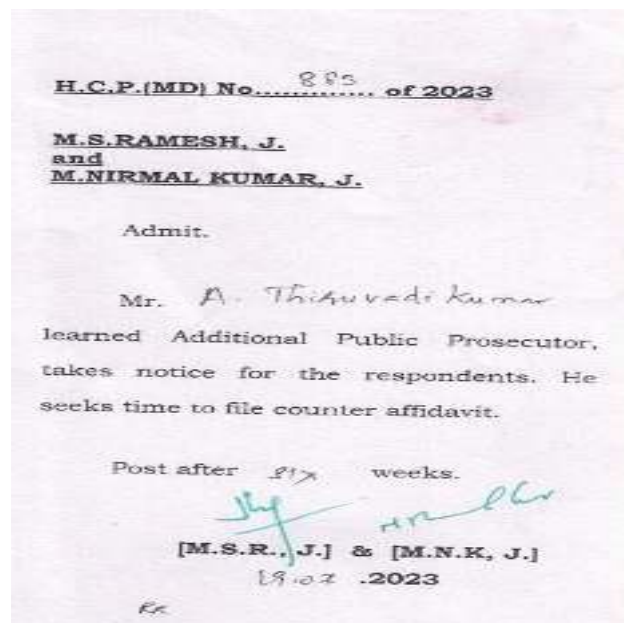
20 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
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 19.07.2023, 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 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.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. When the matter was taken up, it was submitted by both sides that captioned matter is covered by an earlier order made by this Bench i.e., order in *R.Selvi Vs. The Additional Chief Secretary to Government and others* reported in **2023/MHC/4778** (Neutral Citation of this Court i.e., Madras High Court). *Selvi's* case order dated 18.10.2023 reported in **2023/MHC/4778** is as follows:

2023/MHC/4778

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

Coram

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

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

R.Selvi

Petitioner

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 2nd 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 in the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragadeesan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

'Captioned Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the wife of the detainee 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 'Muthialpuzam 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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2. 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, Stamp-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 detainee is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substantiation of the impugned preventive detention order is Crime No.114 of 2023 on the file of Muthialpuzam Police Station for the alleged offences under Sections 294(b), 307 and 506(ii) 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 preventive detention order, it is not necessary to delve into the factual matrix of the case.

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



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5. Captioned HCP was listed in the Admission Board before another Coordinate Docket Division Bench on 01.09.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:-



6. Though very many points have been raised in the support affidavits captioned HCP, learned counsel for HCP petitioner drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention



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order, which reads as follows:

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3..... The offence committed by the accused Ramesh @ 2GB Ramesh 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 Perurani. 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.



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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)Confdl 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
vsm

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



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6. As there is no dispute that captioned HCP is covered by aforementioned **Selvi's** case, we only remind ourselves of the age old adage 'Sauce to Goose is sauce to Gander too'. This means captioned HCP will also be allowed on the same point i.e., same point as that of **Selvi's** case.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.05.2023 bearing H.S.(M) Confdl No. 70/2023 made by the second respondent is set aside and the detenu Thiru.Balavignesh, aged 20 years, son of Karuppasamy, 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

Index : Yes/No
Neutral Citation : Yes/No
PKN

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.,

PKN

To

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