



H.C.P(MD)No.902 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.11.2023

Coram

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

H.C.P(MD)No.902 of 2023

Inbarasu

.. Petitioner/detenuue

VS

- 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,
Office of the District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Palayamkottai 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



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Detention Order in M.H.S.Confdl.No.52/2023 dated 28.06.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Inbarasu, son of Athiyaman, aged about 28 years, now confining as 'Goonda' at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

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

ORDER

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

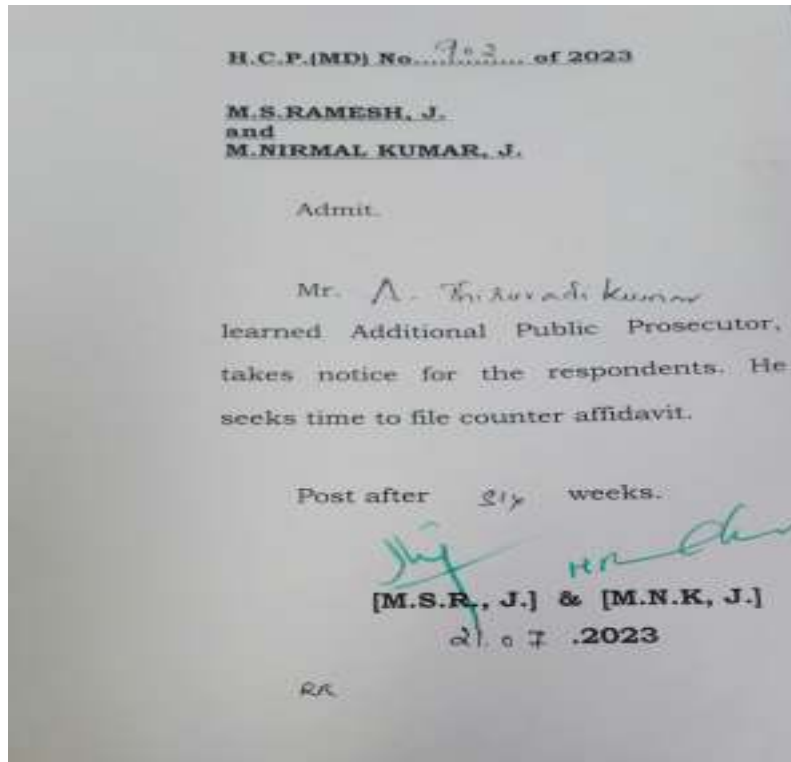
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 21.07.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



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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, captioned matter is in the Final Hearing Board.

4.Mr.R.Prakash, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor are before us.



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5. Captioned HCP has been filed by the detenu assailing a preventive detention order dated 28.06.2023 bearing reference M.H.S.Confdl.No.52/2023' [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 'Chokkampatti 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 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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7. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.77 of 2023 on the file of Chokkampatti Police Station for alleged offence under Section 392 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.

8. In the final hearing board, Mr.R.Prakash, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction arrived at by the detaining authority as regards the ground case is flawed.



9.Elaborating on this submission, learned counsel for petitioner drew the attention of this Court to a portion of the grounds of impugned preventive detention order i.e., a portion in paragraph 6 of the grounds of the impugned preventive detention order, which reads as follows:

'6..... I am also that in a similar case bail has been granted to Jerin in Cr.M.P.No.429/2018 on 02.02.2018 by the Judicial Magistrate No.III, Tirunelveli. I therefore infer that there is real possibility of Thiru.Inbarasu coming out on bail in Chokkampatti Police Station Crime Number 77/2023. Since bails are granted by the appropriate Courts in such cases. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial

10.Adverting to the aforementioned portion, learned counsel submitted that 'bail order dated 02.02.2018 made in Cr.M.P.No.429 of 2018 on the file of the Court of Judicial Magistrate No.III, Tirunelveli' [hereinafter referred to as 'Jerin's case bail order' for the sake of convenience] has been furnished to the detenu as part of the grounds booklet. Adverting to Jerin's case bail order, learned counsel submitted that in Jerin's case, there are no antecedents whereas in the case on hand, even according to the impugned preventive detention order, there are as many as three adverse cases.



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11.In response to the aforementioned argument, learned Prosecutor submitted that the ground case pertains to alleged offence under Section 392 of IPC (Crime No.77 of 2023 on the file of Chokkampatti Police Station, Tenkasi District).

12.Learned counsel submitted that Jerin's case and ground case as far as alleged offences are concerned are broadly comparable.

13.We have carefully considered the rival submissions.

14.This Court has repeatedly held that it is not a mere comparison of alleged offences but it is also a comparison of the determinants/parameters which weighed in the mind of the bail Court in granting bail. In the case on hand, we find that in Jerin's case, there are no antecedents whereas in the ground case, even according to the impugned preventive detention order, there are three adverse cases qua detenu. This by itself makes it clear that comparison of Jerin's case with ground case is a case of comparing Apples and Oranges. This means that



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the comparison exercise is flawed and it further means that the subjective satisfaction arrived at on the basis of such comparison is impaired. If the subjective satisfaction recorded by the detaining authority is impaired, the impugned preventive detention order gets vitiated and becomes liable for being dislodged in the habeas legal drill on hand.

15.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.06.2023 bearing reference M.H.S.Confdl.No.52/2023 made by the second respondent is set aside and the detenu Thiru.Inbarasu, aged 28 years, son of Thiru.Athiyaman, 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.)
07.11.2023

Index : Yes/No
Neutral Citation : Yes/No
ps

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



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 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.
 - 4.The 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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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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