



HCP(MD)No.900 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.900 of 2023

Sakthimoorthi

: Petitioner

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



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PRAYER: 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 of the second respondent in Detention Order M.H.S.Confdl.No.49/2023 dated 20.06.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Sakthimoorthi son of Shanmugavel 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.S.Ravi

Additional Public Prosecutor

O R D E R

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

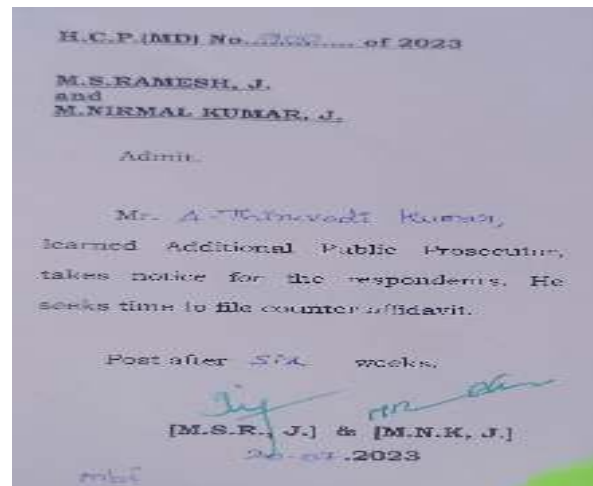
Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 20.07.2023 and Hon'ble Predecessor Coordinate Division Bench made the following order:



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2. Captioned HCP is in the final hearing board today and it has now become necessary to set out short facts.

3. Short facts are that the detention order dated 20.06.2023 made by the 'second respondent' [hereinafter 'detaining authority' for the sake of convenience] 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 HCP petitioner as a "Goonda" within the meaning of Section 2(f) of Act 14 of 1982 has been called in question. This detention order dated 20.06.2023 bearing reference M.H.S.Confdl.No.49/2023 made by the detaining



authority shall be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

4.Considering the short point on which the captioned matter now turns it will suffice to say that the impugned preventive detention order is predicated on one ground case and three adverse cases.

5.Today, Mr.R.Prakash, learned Counsel on record for petitioner and Mr.S.Ravi, learned State Additional Public Prosecutor for all the respondents are before us.

6.Though several points have been raised / urged in the support affidavit, learned Counsel for HCP petitioner drew our attention to the impugned preventive detention order which contains the rubber stamps / seals in the jail regarding service of the same and the grounds of detention being explained to the detenu ie., HCP petitioner. The two seals are as follows:





7.Adverting to the aforementioned seals, learned Counsel submits that the two rubber stamps contradict each other as one says that the impugned preventive detention order has been explained and served on the detainee on 21.06.2023. The other signed by the Additional Superintendent of Palayamkottai Central Prison says that the grounds of impugned preventive detention order were explained to the detenu only on 22.06.2023.

8.Learned Counsel submits that there is a cloud over service of the impugned preventive detention order and the same being explained to the detenu. This by itself impairs the rights of the detenu to make an effective representation which is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India.

9.In response to the above arguments, learned Prosecutor submitted that the detention order in any event being served on the detenu and that is the basis on which the HCP is filed.

10.We carefully considered the rival submissions.

11.We find that there is contradiction regarding service and also the contents being explained to the detenu *qua* impugned



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preventive detention order. This means that we sustain the arguments of learned Counsel for HCP petitioner that the rights of the detenu to make effective representation *qua* impugned preventive detention order have been impaired. This Court has time and again held that such a right is a sanctus constitutional safeguard ingrained in Clause (5) of Article 22. This means that impugned preventive detention order deserves to be dislodged in the habeas legal drill in the captioned matter.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.06.2023 bearing reference M.H.S.Confdl.No.49/2023 made by the second respondent is set aside and the detenu Thiru.Sakthimoorthi, male, aged 28 years, son of Shanmugavel, 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.]
04.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

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Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned are to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

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,
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Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.
- 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.900 of 2023

04.12.2023