



H.C.P(MD)No.910 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.910 of 2023

Murugavel

.. Petitioner

VS

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 No. 51/BCDFGISSSV/2023 dated 24.06.2023 and quash the same and direct the respondents to produce the detenu by name Thirupathi alias Kavathu



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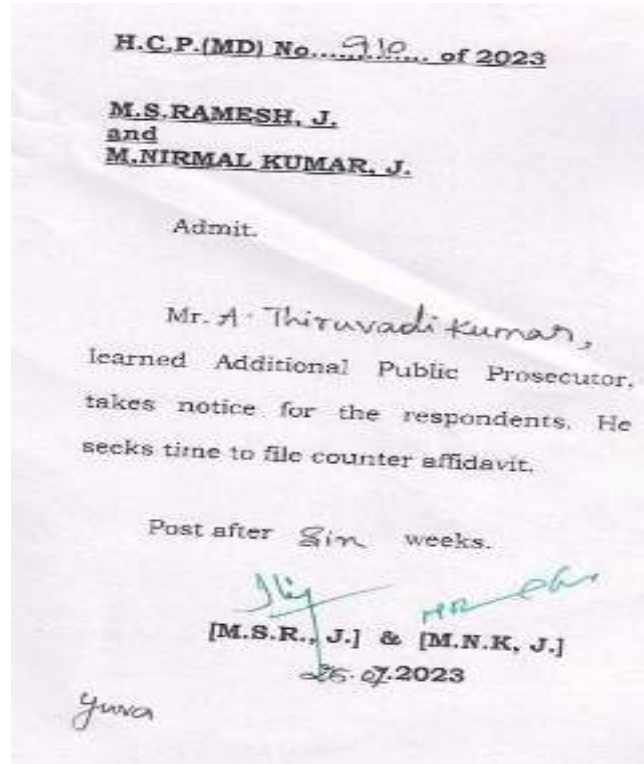
Thiruppathi, son of Uchimahali Thevar aged about 47 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
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 25.07.2023, 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.R.Alagumani, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the brother of the detenu assailing a 'preventive detention order dated 24.06.2023 bearing No. 51/BCDFGISSSV/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 'B6 Jaihindpuram 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



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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.

7. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.284 of 2023 on the file of B6 Jaihindpuram Police Station for the alleged offences under Sections 447, 294(b), 341 and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 and subsequently altered into Sections 120-B, 294(b), 341, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002. 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.

8. Learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent



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possibility of detenu being enlarged on bail is flawed. To buttress this argument, learned counsel for petitioner drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'I am aware that Thiruppathi @ Kavathu Thiruppathi, s/o. Uchimahali Thevar is in remand in the ground case in B6 Jaihindpuram PS Cr.No.284/2023 u/s 447, 294(b), 341, 506(i) IPC & Section 4 Tamil Nadu Prohibition of Harassment of Women Act 2002 altered into Section 120-B, 294(b), 341, 506(i) IPC & Section 4 Tamil Nadu Prohibition of Harassment of Women Act 2002 and B6 Jaihindpuram PS Cr.No. 289/2023 u/s 25(1) (a) Arms Act 1959, in the Central Prison, Madurai.

..... I am also aware that bail was granted by the Judicial Magistrate, Additional Mahila Court, Madurai in CrI.M.P.No. 1652/2021 on 06.07.2021 to one accused Abinesh concerned in the case in E1 K.Pudur (E5 Mattuthavani) PS Cr.No.634/2021 u/s 147, 294(b), 323, 506(i) IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, which is a case similar to that of the above said ground case in B6 Jaihindpuram PS Cr.No.284/2023.....

..... I am also aware that bail was granted by the Principal Sessions Judge (i/c), Madurai in CrI.M.P.No.1885/2023 on 21.03.2023 to one accused Karthikeyan @ Mental Karthick concerned in the case in C1 Thideer Nagar PS Cr.No.148/2023



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u/s 25(1A) Arms Act 1959, which is a case similar to that of the above said case in B6 Jaihindpuram PS Cr.No.289/2023.....'

9. Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 06.07.2021 made in Cr.M.P.No.1652 of 2021 on the file of Additional Mahila Court, Madurai' [hereinafter 'Abinesh case' for the sake of brevity] and 'bail order dated 21.03.2023 made in Cr.M.P.No.1885 of 2023 on the file of Principal Sessions Court, Madurai' [hereinafter 'Karthikeyan alias Mental Karthick case' for the sake of brevity].

10. Similar case relied on for arriving at subjective satisfaction as regards imminent possibility of detenu being enlarged on bail in the adverse case (Karthikeyan alias Mental Karthick case) pertains to alleged offence under Section 25(1A) of Arms Act 1959 whereas the adverse case (Crime No.289 of 2023 on the file of B6 Jaihindpuram Police Station) is for alleged offence under Section 25(1)(a) of Arms Act 1959. Therefore, the comparison is bad/flawed is learned counsel's say.



11. In response to the above argument, learned Prosecutor submitted to the contrary.

12. Learned Prosecutor submitted that the alleged offences in Abinash's case and the ground case are broadly comparable.

13. We have carefully considered the rival submissions.

14. This Court has repeatedly held that as regards comparing a ground case with another case bail order it is not merely the alleged offences but it is the determinants/parameters which weighed in the mind of the bail Court for granting discretionary relief of bail. Comparing Section 25(1A) of Arms Act 1959 with Section 25(1)(a) of Arms Act 1959 is comparing Apples and Oranges. Section 25(1A) entails punishment only up to a maximum of fourteen years whereas Section 25(1)(a) (adverse case) is a graver offence for which imprisonment up to life imprisonment can be given. Similarly, the offences in the ground case and in Abinash's case are different. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. If such subjective satisfaction is flawed, the consequence is the impugned preventive



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detention order gets vitiated and becomes liable for being dislodged in a habeas legal drill. This means that the impugned preventive detention order in the captioned HCP also deserves to be dislodged in the habeas legal drill on hand.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.06.2023 bearing No. 51/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Thirupathi alias Kavathu Thiruppathi, aged 47 years, son of Uchimahali Thevar, 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
Internet: Yes/No
Neutral Citation : Yes/No
PKN

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



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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George, Chennai – 600 009.
 - 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
 - 3.The Superintendent of Prison,
Madurai Central Prison, ,
Madurai District.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
R.SAKTHIVEL, J.,

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