



**HCP(MD)No.911 of 2023**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 07.11.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

**and**

**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**H.C.P.(MD)No.911 of 2023**

Rasathi

: Petitioner

Vs.

- 1.The State rep. by  
The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,  
Perambalur District,  
Perambalur.
- 3.The Superintendent of Prison,  
Central Prison,  
Trichy.
- 4.The Inspector of Police,  
Mangalamedu Police Station,  
Perambalur District.

: Respondents



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**PRAAYER:** Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records relating to the impugned order of Detention made in Cr.M.P.No.11/2023 dated 26.06.2023 on the file of the District Collector and District Magistrate, Perambalur District, the 2<sup>nd</sup> respondent herein, branded the petitioner's husband/the detenu by name Mathi @ Mathiyalagan, S/o.Periyasami, aged about 38 years as 'GOONDA' who is now confined in Central Prison, Trichy and quash the impugned order of detention and set the detenu at liberty by producing him before this Hon'ble Court.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

### **ORDER**

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

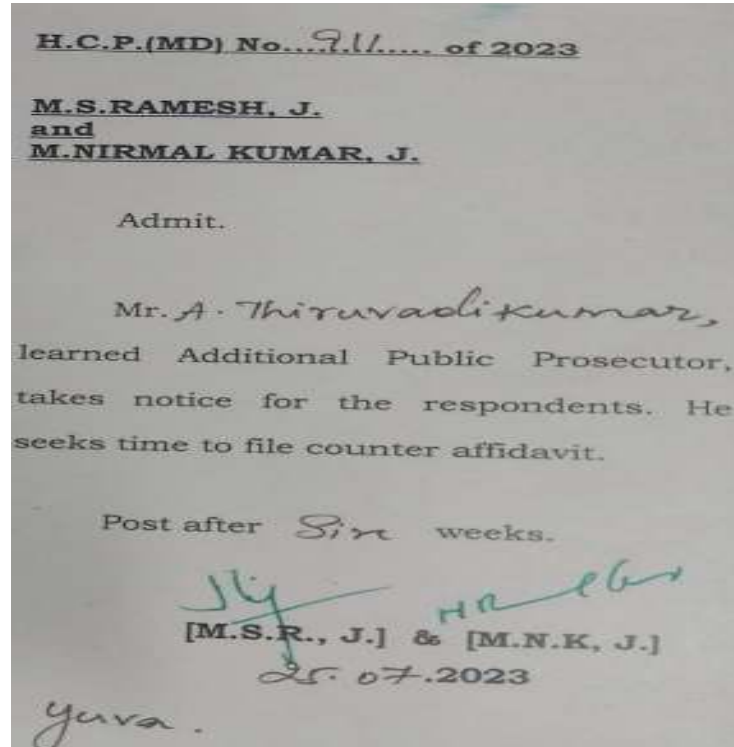
When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 25.07.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



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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.T.J.Ebenezer Charles, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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5. Captioned HCP has been filed by wife of the detenu assailing a 'preventive detention order dated 26.06.2023 bearing reference Cr.M.P.No. 11/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, fourth respondent is the sponsoring authority.

6. Impugned 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.

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.132 of 2023 on the file of Mangalamedu Police Station for alleged offences under Sections 457 and 380 of 'The Indian



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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 support affidavit *qua* captioned HCP though several grounds have been raised, learned counsel for HCP petitioner predicated his campaign against the impugned Preventive Detention Order in the final hearing board on one point and the one point is that the subjective satisfaction arrived at and recorded by the Detaining Authority is impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph No.5 of the grounds of impugned preventive detention order, which reads as follows:

*'5.However, one Thiru.Murugan, brother of the accused Thiru.Mathi alias Mathiyalagan is taking action to take out his brother Thiru.Mathi alias Mathiyalagan on bail for the cases registered in 1.Mangalamedu Police Station Crime Number, 132/2023, under Sections 457 and 380 of Indian Penal Code and 2.Mangalamedu Police Station Crime No.131/2023 under Section 380 of Indian Penal Code by filing another bail applications before the appropriate Court.....'*



9. Adverting to the aforesaid portion, learned counsel submitted that there is no material to support the aforementioned averment in the grounds of impugned preventive detention order, which is one of the determinant on the basis of which subjective satisfaction *qua* imminent possibility of detenu being enlarged on bail has been recorded. As the above points turns heavily on records before this Court, learned State Additional Public Prosecutor really does not have much of say.

10. We have carefully considered the aforementioned submissions and we find that the aforementioned averment is not supported by any documents. This leads to two points which vitiated the impugned preventive detention order. First point is non-application of mind as the detaining authority has made an averment regarding the steps being taken by the brother of the detenu for taking him out on bail without any material before the detaining authority. The second point is the subjective satisfaction recorded by the detaining authority *qua* imminent possibility of detenu being enlarged on bail is impaired. As the impugned preventive detention order is vitiated on the twin grounds set out herein, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in this habeas drill on hand.



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**11.** Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 26.06.2023 bearing reference Cr.M.P.No. 11/2023 made by the second respondent is set aside and the detenu Thiru.Mathi alias Mathiyalagan, male, aged 38 years, son of Periyasami, 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  
Neutral Citation : Yes  
vsm

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



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**M.SUNDAR, J.**

**and**

**R.SAKTHIVEL, J.**

vsm

To

- 1.The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.
- 2.The District Collector and the District Magistrate,  
Perambalur District,  
Perambalur.
- 3.The Superintendent of Prison,  
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Perambalur District.

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- 5.Joint Secretary to Government,  
Public (Law and Order) Department,  
Secretariat, Chennai.
- 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**07.11.2023**