



H.C.P(MD)No.920 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.920 of 2023

Muthulakshmi

.. Petitioner

VS

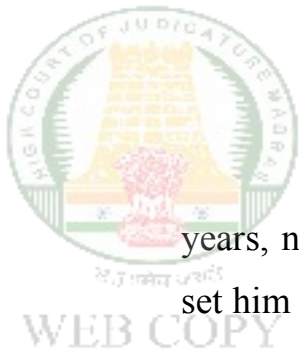
1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi – 11.

3.The Superintendent of Prison,
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 M.H.S.Confdl No.36/2023 dated 16.05.2023 and quash the same and direct the respondents to produce the detenu by name Esakkipandi, son of Mariappan aged about 21



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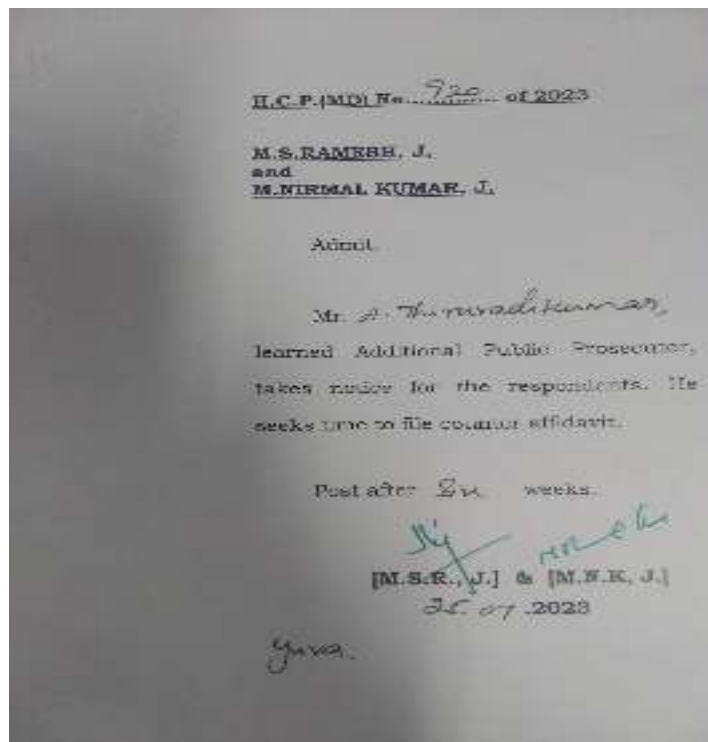
years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.S.Sundarapandian
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.S.S.Sundarapandian, 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 mother of the detenu assailing a 'preventive detention order dated 16.05.2023 bearing M.H.S.Confdl No.36 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 'Alangulam 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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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.

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.113 of 2023 on the file of Alangulam Police Station for the alleged offences under Sections 341 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 147, 148, 341, 302, 120-B read with 109 of IPC. 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 6 of the grounds of impugned preventive detention order which reads as follows:

'6.....I am also aware that in a similar case bail has been granted to Mariappan in Cr.M.P.No.1985 of 2020 on 13.03.2020 by the Sessions Court, Tirunelveli. I therefore infer that there is a real possibility of Thiru.Esakkipandi coming out on bail in Alangulam Police Station Crime No.113 of 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 to the maintenance of the public order.....'

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 13.03.2020 made in Cr.M.P.No.1985 of 2020 on the file of Sessions Court, Tirunelveli' [hereinafter 'Mariappan's bail order' for the sake of brevity].

10. Learned counsel for petitioner submitted that Mariappan's bail order has been furnished to the detenu as part of the grounds booklet and a careful perusal of the same brings to light that in Mariappan's case, the petitioner did not have any previous case i.e., there was no bad antecedent



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for Mariappan, whereas in the case on hand, even according to the impugned preventive detention order there is one adverse case. Therefore, the comparison is bad/flawed is learned counsel's say.

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

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

11. We have carefully considered the rival submissions.

12. 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. In this view of the matter, it is clear that in Mariappan's case, one of the main determinants that has weighed in the mind of the bail Court to grant the discretionary relief of bail is, Mariappan did not have bad antecedents i.e., there was no previous case for Mariappan whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there is one adverse



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case for the detenu. 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 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.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.05.2023 bearing M.H.S.Confdl No.36 of 2023 made by the second respondent is set aside and the detenu Thiru.Esakkipandi, aged 21 years, son of Mariappan, 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
Neutral Citation : Yes
vsm

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.,

vsm

To

- 1.The Additional Chief Secretary to Government,
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- 2.The District Collector and District Magistrate,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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