



H.C.P(MD)No.1032 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**  
and  
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

**H.C.P(MD)No.1032 of 2023**

Jancirani

... Petitioner

vs.

1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai – 600009.

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

3. The Superintendent,  
Madurai Central Prison,  
Madurai.

... Respondents

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 2<sup>nd</sup> respondent in No. 42/BCDFGISSSV/2023 dated 25.05.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Surya @ Kutti Sakku, son of Nagarajan, aged about 21 years, now detained as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.



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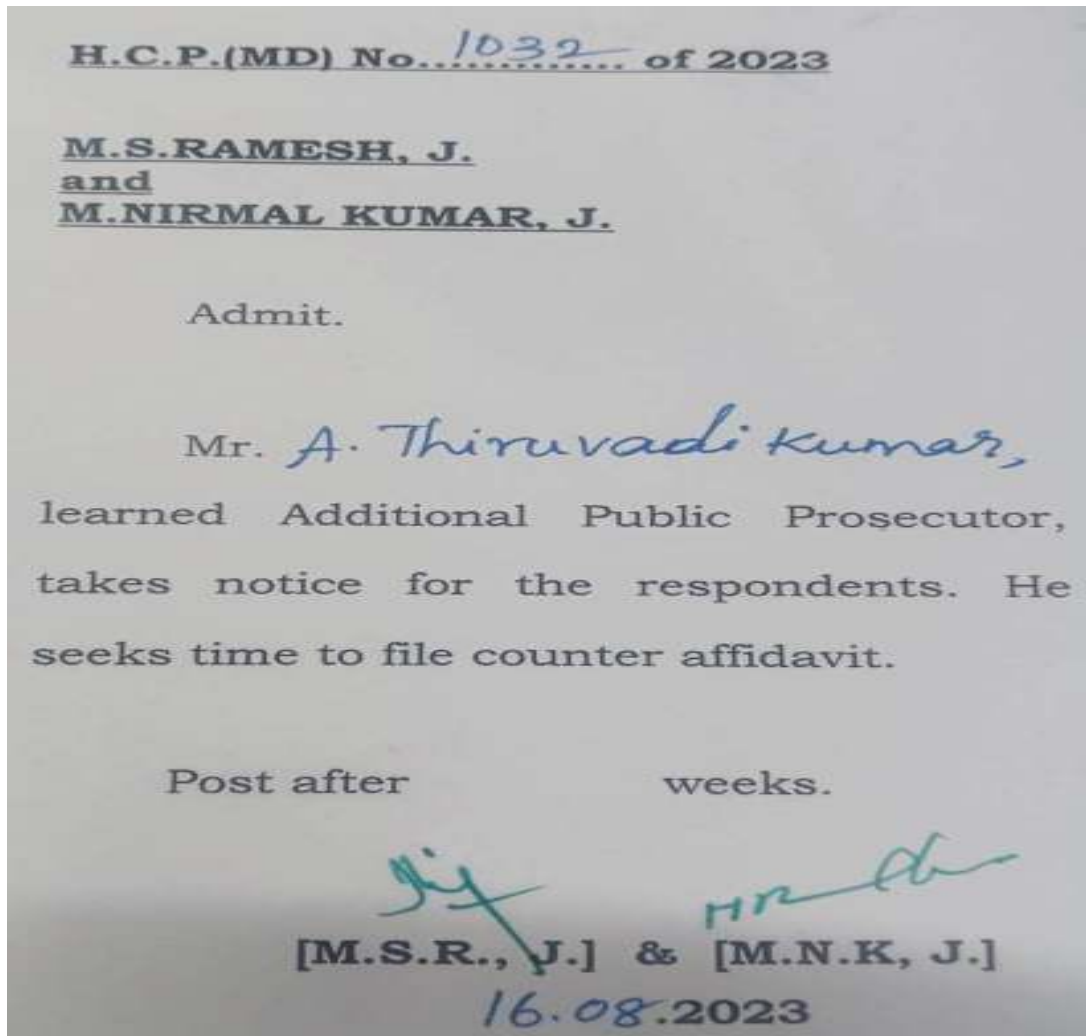
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For Petitioner : Mr.R.Alagumani  
For Respondents : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

### **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 16.08.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order in the Admission Board:





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 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the mother of the detenu assailing the 'preventive detention order dated 25.05.2023 bearing reference No.42/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 and we find that Station House Officer of D1 Tallakulam Police Station, is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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 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.470 of 2023 on the file of D1 Tallakulam Police Station, for alleged offences under Sections 341, 294(b), 392 r/w 397, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] r/w Section 25(1-B)(a) of Arms Act, 1959 and subsequently altered into Sections 341, 294(b), 392 r/w 397, 506(ii) of IPC r/w Section 25(1-B)(a) of Arms Act, 1959 and Section 83(ii) of Juvenile Justice (Care and Protection of Children) Act, 2015. 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 today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of detention and the relevant portion reads as follows:

*'5.... I am also aware that bail was granted by the Principal Sessions Judge, Madurai in CrI.M.P.No.5309/2021 on 2.11.2021 to one accused Boopathi @ Boopathi Ragavendra s/o. Palanivel concerned in the case in D3 Koodalpudur PS Cr.No.494/2021 u/s 392, 397 and 506(ii) IPC and 25(1)(a), 27(1) Arms Act 1959, which is a case similar to that of the said ground case.*

*Hence, I am satisfied that there is a real possibility of his (Surya @ Kutti Sakku, s/o. Nagarajan) coming out on bail through the pending bail application before the court concerned in the ground case, since in a case similar to that of the ground case, bail has been granted by the court to the accused. ....'*

9. Learned counsel submitted that aforementioned bail order in Boopathi's case has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned Boopathi's case, learned counsel submitted that in Boopathi's case, bail was granted on the ground that co-accused therein was already granted bail but in this case, none of



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the co-accused has been enlarged on bail and therefore the subjective satisfaction [qua imminent possibility of detenu being enlarged on bail] arrived at by the detaining authority is impaired.

10. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases i.e., ground case and Boopathi's case bail order are broadly comparable.

9. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as the similar case relied on by the detaining authority is not similar because none of the co-accused in the ground case has been enlarged on bail and therefore, the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail, is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.05.2023 bearing reference No.



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42/BCDFGISSSV/2023 made by the detaining authority is set aside and the detenu Thiru. Surya @ Kutti Sakku, aged 21 years, son of Thiru.Nagarajan, 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  
Neutral Citation : Yes / No  
bala

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

To

1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai – 600009.

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

3. The Superintendent,  
Madurai Central Prison,  
Madurai.

4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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5. The Joint Secretary to Government,  
Public (Law and Order) Department,  
Secretariat, Chennai.



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**M.SUNDAR, J.**  
**and**  
**R.SAKTHIVEL, J.**

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**ORDER MADE IN**  
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**DATED : 30.10.2023**