



H.C.P(MD)No.989 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.989 of 2023

Manickam

.. Petitioner/Detenu

VS

1.The Principal 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

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 second respondent in



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detention order M.H.S.Confdl.No.31/2023 dated 24.04.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Manickam, son of Madasamy, aged about 25 years, now confining as 'Sexual Offender' at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Muthukumar
for Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity] was listed in the admission board on 09.08.2023 and a Hon'ble Predecessor Coordinate Division Bench made the following order:



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadikumar,
learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after six weeks.

[M.S.R., J.] & [M.N.K, J.]

09.08.2023

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2.It has now become necessary to set out factual matrix in a nutshell.

3.Short facts shorn of elaboration are that the second respondent [jurisdictional District Collector ie., District Collector of Tenkasi District] clamped a preventive detention order on HCP petitioner Thiru.Manickam, aged 25 years, Son of Thiru.Madasamy,



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branding him as a 'Sexual Offender' within the meaning of Section 2(ggg) of '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 brevity, convenience and clarity]. The substratum of this preventive detention order which shall hereinafter be referred to as 'impugned preventive detention order' is constituted by one ground case and one adverse case. Suffice to say that while the ground case is Crime No.05 of 2023 on the file of Tenkasi All Women Police Station for alleged offences under Section 366 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and Section 10 read with 9(m) of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of convenience and clarity], the adverse case is Crime No.225 of 2022 on the file of Sambavarvadakarai Police Station for alleged offences under Sections 354A(1)(i), 354(A)(1)(v) and 323 of IPC which was altered to Section 354(A)(1)(v) and 323 of IPC.



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4.In the support affidavit qua captioned HCP, several points have been raised but in the final hearing board today, learned counsel for HCP petitioner posited his argument as regards assailing impugned preventive detention order on the point that there is delay in considering his representation and this has infringed his constitutional rights under Article 22(5) of the Constitution. Learned counsel pointed out that a representation dated 24.07.2023 was sent but the rejection of the same was served on the detenu only on 21.08.2023. To be noted, detenu himself is HCP petitioner.

5.In response to the delay in considering representation argument of learned counsel for HCP petitioner, learned Prosecutor placed before us a tabulation and a scanned reproduction of the same is as follows:

6.Adverting to aforementioned tabulation, learned



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H.P&E(XIV)Dept

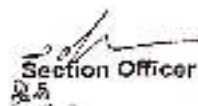
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Column-II
REPRESENTATION

1.	Category (Goonda/Drug Offender/Sexual Offender etc.)	Sexual Offender
2.	Name	Thiru. Manickam
3.	Detention Order No & Date	31/2023, dated 24.04.2023
4.	District / City	Tenkasi District
5.	Representation dated	24.07.2023
6.	Representation received on	10.08.2023
(A)	If the representations are received in other languages, Files sent for translation on	---
	File received on	---
(B)	If any clarification/details are required on representations	---
	Remarks called for from the Detaining Authority on	---
	Remarks received on	---
7.	File submitted on by ASO/SO	11.08.2023
8.	Under Secretary dealt with on	---
9.	Deputy Secretary / Joint Secretary / Additional Secretary dealt with on	11.08.2023
9A	Approval Date of Secretary/Principal Secretary/Additional Chief Secretary	---
10.	Minister dealt with on	14.08.2023
11.	Rejection letter prepared on	17.08.2023
12.	Rejection letter served to the detenu (by the prison)	21.08.2023

Government Holidays: 15.08.2023, 19.08.2023, 20.08.2023

Sl.No.	Representation	Column 5 to 9A	Column 10 to 12
1.	No. of days	-	8
2.	No. of Holidays	-	3
3.	No. of delay days	-	8
	Total	3 days delay	


Section Officer

Prosecutor submitted that delay is only three days.

7. We have carefully considered the rival submissions.



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8.Considering the facts and circumstances of the case, we are of the view that ***Rajammal's*** principle being ratio laid down by Hon'ble Supreme Court in ***Rajammal Vs. State of Tamil Nadu and others*** reported in ***(1999) 1 SCC 417*** is relevant. To be noted, ***Rajammal's*** principle is to the effect that the duration of delay is not the sole determinant and that explanation for delay will be the clinching determinant. It is also to be noted that ***Rajammal's*** case has been repeatedly followed by various Hon'ble Coordinate Division Benches of this Court in a plethora of cases. Learned counsel for HCP petitioner has placed before us one such case law being ***Sumaiya's*** case law [***Sumaiya Vs. The Secretary to Government and another*** reported in ***2007 (2) MWN (Cr.) 145 (DB)***].

9.It may not be necessary to delve into the trajectory in greater detail as on the face of it, time lapse as between date on which rejection letter was prepared (17.08.2023) and the date on which rejection letter was actually served on the detenu (21.08.2023) remains unexplained. Considering the facts and circumstances of the case, we



find that this delay though fairly short in terms of numeric expression is fatal to impugned preventive detention order. Therefore we are dislodging impugned preventive detention order in this habeas legal drill.

10.Before we write the operative portion of this order, two points are relevant and they are as follows:

(i) As regards delay in considering representation, this order will not serve as a precedent across the board and delay point ie., delay in considering representation point has to be considered on a case to case basis; and

(ii) According to learned Prosecutor, the final reports ie., charge sheets have since been filed in the trial Court. If the charge sheets have been filed within time, the detenu will have to apply for regular bail. If it is not within time, detenu will be entitled to default bail under Section 167(2) of Cr.P.C. If it is a case of regular bail, we make it clear that the same shall be considered on its own merits and in accordance with law untrammelled by this order vide which we have dislodged impugned preventive detention order. The reason is the instant



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order is for the limited purpose of testing impugned preventive detention order in a habeas legal drill on technical points available to the detenu.

11.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.04.2023 bearing M.H.S.Confdl.No.31/2023 made by the second respondent is set aside and the detenu Thiru.Manickam, aged 25 years, son of Thiru.Madasamy, 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.)
18.12.2023

Index : Yes

Neutral Citation : Yes

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Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

(ii) All concerned 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.



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 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.
 - 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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