



H.C.P.(MD)No.991 of 2023CP(MD)No.991 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

H.C.P.(MD)No.991 of 2023

Karuppasamy @ Karuppan

: Petitioner

Vs.

1.The Additional Chief 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,
Thoothukudi District.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in Detention order H.S.(M)Confdl.No.57/2023 dated 12.04.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Karuppasamy @ Karuppan son of Esakkimuthu, aged about 27 years, now confining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference H.S.(M)Confdl.No. 57/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent



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District Collector, Thoothukudi District, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Thoothukudi North Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

2.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.

3.There is one adverse case and one ground case. The impugned preventive detention order has been passed against the detenu based on a ground case in Crime No.75 of 2023 on the file of Thoothukudi North Police Station for the alleged offences under Sections 341, 294(b) and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]



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and subsequently altered into one under Sections 341, 294(b) and 302 of IPC. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4.Today, Mr.R.Prakash, learned Counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

5.In the final hearing board, today, though very many points have been raised *qua* captioned HCP, learned Counsel for HCP petitioner drew our attention to a portion of paragraph No.7 of the grounds of impugned preventive detention order which read as follows:

'7. I am aware that the accused Karuppasamy @ Karuppan was arrested in the ground case on 19.03.2023 and produced before the Court of Judicial Magistrate No.III, Thoothukudi, on the same day and forwarded to judicial custody up to 31.03.2023 and lodged in Thoothukudi District Jail at Perurani. ...'

6.Adverting to the above portion of the grounds of the impugned preventive detention order, learned Counsel submitted



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that detaining authority has specifically relied on the fact that the detenu was arrested on 19.03.2023 in the ground case and produced before the jurisdictional Judicial Magistrate ie., Judicial Magistrate No.III, Thoothukudi and was remanded to judicial custody up to 31.03.2023 by the learned Judicial Magistrate and lodged in Thoothukudi District Jail at Perurani but the copy of this order of remand made by the learned Judicial Magistrate has not been furnished to the detenu.

7.Learned Counsel submitted that post serving of impugned preventive detention order and the grounds booklet on the detenu, the detenu sent representation dated 24.07.2023 and in the representation *inter alia* the aforementioned remand order was specifically sought for. It was pointed out that the aforementioned remand order has not been furnished to the detenu as part of the grounds booklet. Though the detenu has specifically raised this point and sought for the copy of the remand order ie., remand order dated 19.03.2023 has not been furnished to the detenu and this has impaired the detenu's right to make an effective representation is learned Counsel's say. This has further vitiated the impugned preventive detention order is learned Counsel's further say.



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8.In response to the aforementioned arguments, learned State Additional Public Prosecutor submitting to the contrary, pointed out that the detainee is well aware that he was arrested and remanded to judicial custody on 19.03.2023. Learned Prosecutor pointed out that he was also aware that the copy of the remand order has not been furnished to him in the grounds booklet.

9.We carefully considered the rival submissions.

10.As regards the documents that are relied upon by detaining authority to clamp a preventive detention order, it is important that the documents that have been relied upon by the detaining authority are furnished to the detainee so that the detainee is able to make effective representation as against the impugned preventive detention order as such right is a sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of India. Violation or breach of the constitutional safeguard vitiates the impugned preventive detention order and leaves the impugned prevention detention order vulnerable for being dislodged in a habeas legal drill.



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11.In the case on hand, the vulnerability is multiplied many times as the detenu has specifically pointed out that remand order has not been furnished and despite his representation seeking copy of remand order, the remand order dated 19.03.2023 has not been furnished to the detenu. This means that this is a fit case to sustain the submission of the learned Counsel for petitioner and dislodge the impugned preventive detention order in this habeas legal drill.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference H.S.(M)Confdl.No.57/2023 made by the second respondent is set aside and the detenu Thiru.Karuppasamy @ Karuppan, male, aged 27 years, son of Thiru.Esakkimuthu, 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.K.M.,J.]
05.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
MR

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



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To

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- 3.The Superintendent of Prison,
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Palayamkottai,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.
and
R.KALAIMATHI, J.

MR

ORDER MADE IN
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05.10.2023