



H.C.P(MD)No.995 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.995 of 2023

Shanthi

... Petitioner

vs.

1. The State of Tamil Nadu,
rep by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600009.

2. The District Collector cum District Magistrate,
Tenkasi District,
Tenkasi.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent in M.H.S.Confdl No. 39 of 2023 dated 18.05.2023 and quash the same and direct the respondents to produce the detenu Thiru.Sankara Narayanan son of Chinnadurai, Male aged 24, who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.



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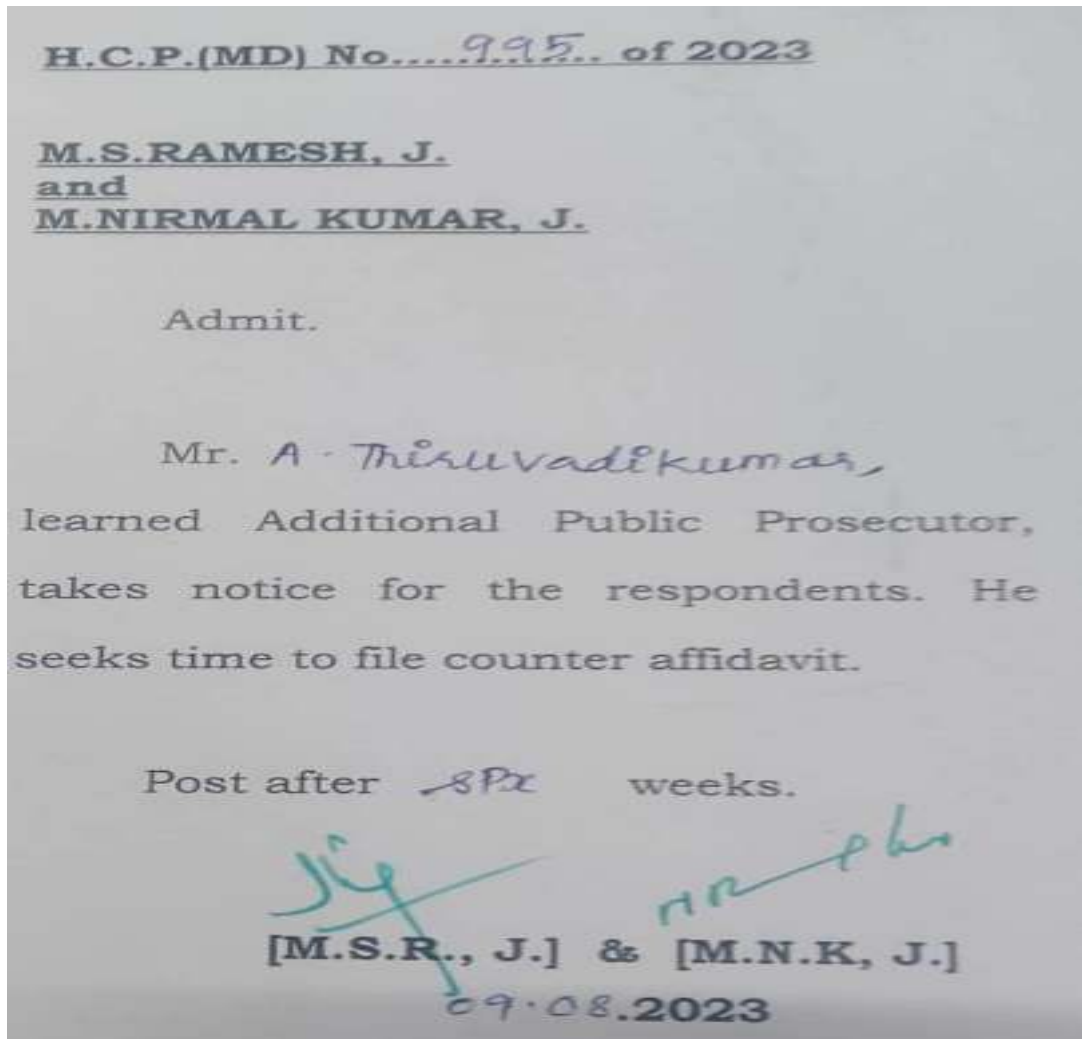
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For Petitioner : Mr.P.Kesavan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 09.08.2023, 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.P.Kesavan, 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 wife of the detenu assailing the 'preventive detention order dated 18.05.2023 bearing reference M.H.S.Confdl No.39 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 and we find that Station House Officer of Tenkasi 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.170 of 2023 on the file of Tenkasi Police Station, for alleged offences under Sections 294(b), 427, 352 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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



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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 6 of the grounds of detention and the relevant portion reads as follows:

'6.... I am also aware that in a similar case bail has been granted to Subashkannan in CRMP No.64/2022 on 21.02.2022 by the Judicial Magistrate, Shenkottai. I therefore infer that there is real possibility of Thiru.Sankaranarayanan coming out on bail in Tenkasi Police Station Crime Number 170/2023 since bails are granted by the appropriate courts in such cases.'

9. A careful perusal of Subashkannan's case bail order in the grounds booklet, more particularly, a paragraph thereat brings to light that the then prevailing Covid-19 situation had weighed in the mind of the learned Sessions Judge in granting bail. Relevant portion reads as follows:

'... Further, considering the extra-ordinary situation prevailing due to Covid-19m there arises a need to maintain social distance to prevent the spreading of virus across the country, and also considering the nature of the case and objection raised by the state, this court is inclined to grant bail to the petitioner with the following conditions.'



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10. Learned Prosecutor submitted to the contrary by saying that alleged offences in Subashkannan's case bail order and case on hand are broadly comparable.

11. We carefully considered the rival submissions.

12. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Subashkannan's case bail order would not apply to the case on hand as the impugned preventive detention order has been made on 18.05.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn was granted owing to then prevalent Covid-19 situation, is impaired leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.



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13. Apropos, the further sequitur is, captioned HCP is allowed.

Impugned preventive detention order dated 18.05.2023 bearing reference M.H.S.Confdl.No.39/2023 made by the detaining authority is set aside and the detenu Thiru.Sankaranarayanan, aged about 24 years, son of Thiru.Chinnadurai, 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Sub Jail, Tenkasi.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600009.

2. The District Collector cum District Magistrate,
Tenkasi District,
Tenkasi.

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



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

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



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

bala

ORDER MADE IN
H.C.P(MD)No.995 of 2023
DATED : 30.10.2023