



H.C.P(MD)No.998 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.998 of 2023

Ajith @ Vigneswaran

... Petitioner

vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai – 600009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Virudhunagar District.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 respondent No.2 in Cr.M.P.No. 11/2023 (Goonda) dated 30.06.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Ajith @ Vigneswaran son of Vetrivel @ Udaiyappan aged about 25 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.



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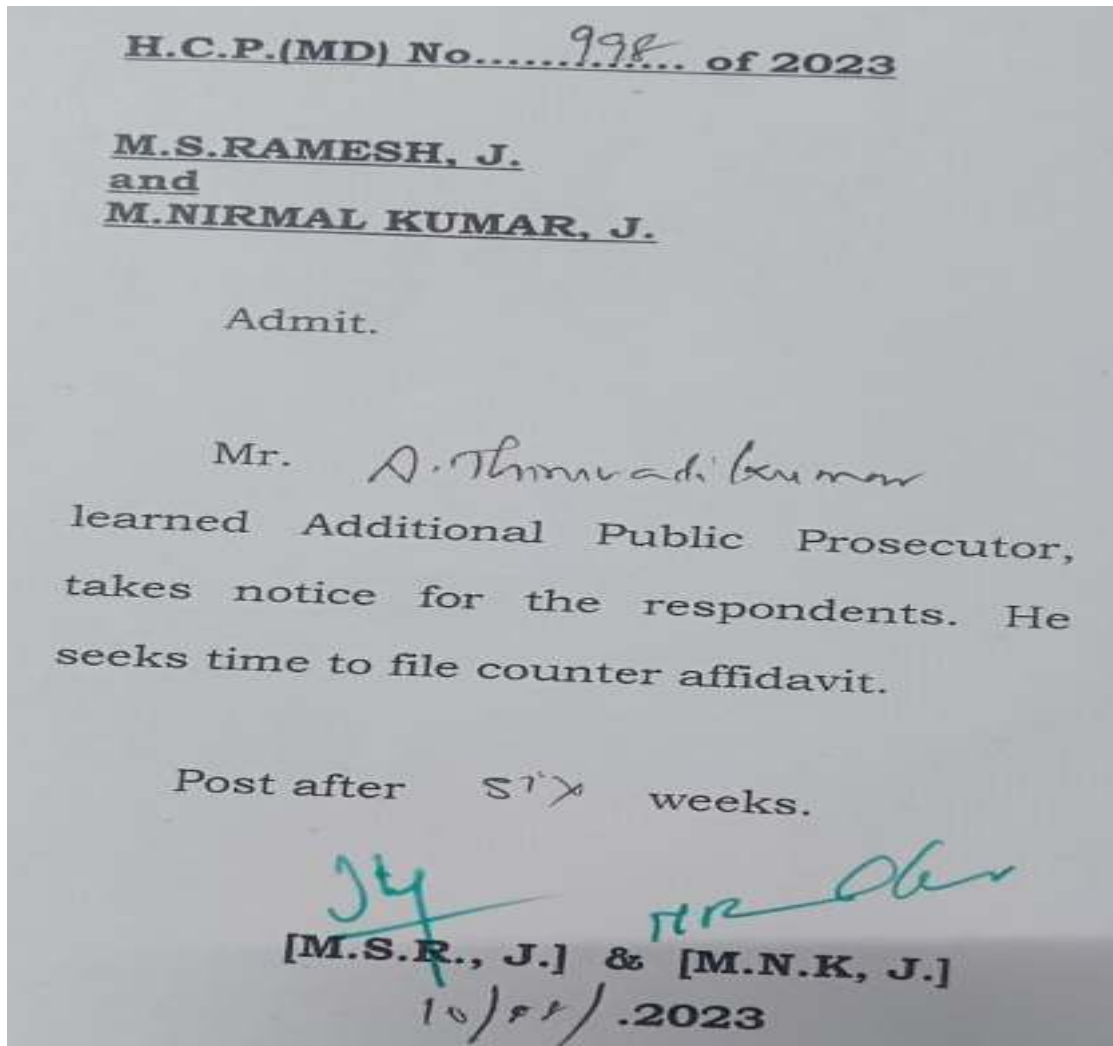
H.C.P(MD)No.998 of 2023

For Petitioner : Mr.S.Ramesh Kumar
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 10.08.2023, 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.S.Ramesh Kumar, 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 detenu assailing the 'preventive detention order dated 30.06.2023 bearing reference Cr.M.P.No.11/2023' [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 Thiruchuli 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.62 of 2023 on the file of Thiruchuli Police Station, for alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 147, 148, 302 and 397 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.

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:

'.....

ii) But in this case, the District Principal Sessions Court, Srivilliputhur granted bail to the co-accused Malramraj vide Cr.M.P.No.2701/2023 dated 07.06.2023. Hence I am also aware that there is a real possibility of he (Thiru.Ajith @ Vigneswaran) might have come out on bail by filing a bail petition in the ground case before the concerned court or in the higher court, in future, since bails are granted by the court in such case.'

9. Learned counsel submitted that aforementioned bail order in Malramraj's case has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned Malramraj's case, learned counsel submitted that in Malramraj's case, bail was granted considering the nature of the case and gravity of offence but in this case, no bail petition was pending at the time of passing of the impugned preventive detention order and therefore the subjective satisfaction [qua imminent possibility of detenu being enlarged on bail] arrived at by the detaining authority is impaired.



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10. Responding to the aforementioned argument, learned Prosecutor submitted that the detenu and Malramraj in similar case bail order are co-accused in the ground case and therefore, the subjective satisfaction arrived at by the detaining authority is not impaired.

11. We carefully considered the rival submissions and we find that Malramraj's case bail order does not show that there was any adverse case. It is also to be noticed that Malramraj is co-accused qua detenu in the ground case but he was not clamped with preventive detention order. Therefore, Malramraj's case bail order being Cr.M.P.No.2701/2023 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur, cannot be a benchmark for arriving at subjective satisfaction as regards imminent possibility of detenu being enlarged on bail in the ground case. This means, we sustain the point canvassed by the learned counsel for petitioner that similar case is not similar.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.06.2023 bearing reference Cr.M.P.No.11/2023 made by the detaining authority is set aside and the detenu Thiru.Ajith @ Vigneswaran, aged 25 years, son of Thiru.Vetrivel @ Udaiyappan, is



H.C.P(MD)No.998 of 2023

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 Central Prison, Madurai.

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai – 600009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Virudhunagar District.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
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.

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ORDER MADE IN
H.C.P(MD)No.998 of 2023
DATED : 30.10.2023