



H.C.P(MD)No.1050 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.10.2023

Coram

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

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Sarthaj Begam

.. Petitioner/Mother of the detenue

VS

1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
St.George Fort,
Chennai – 600 009.

2.The District Magistrate and District Collector,
Thanjavur District,
Thanjavur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

4.The Inspector of Police,
Kumbakonam East Police Station,
Kumbakonam,
Thanjavur District.

.. Respondents



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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 in connection with the detention order against the detenu in P.D.No.38 of 2023 dated 17.06.2023 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Mohamed Thoufick, son of Kamaludeen, male, aged about 25 years, now confined at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Seenisulthan
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] was listed in the Admission Board on 21.08.2023 and the Hon'ble Predecessor Coordinate Bench made the following order and a scanned reproduction of the same is as follows:



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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 3 weeks.

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

21.08.2023

LM



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2.Today captioned HCP is in the final hearing Board.

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3.Shorts facts (shorn of elaboration) i.e., facts imperative for appreciating this final order are that 'a preventive detention order dated 17.06.2023 bearing P.D.No.38 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] was made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]; that impugned preventive detention order was clamped qua one 'Thiru.Mohamed Thoufick, aged 25 years, son of Thiru.Kamaludeen' [hereinafter 'detenu' for the sake of convenience and clarity]; that impugned preventive detention order has been made by the Detaining Authority in exercise of powers 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; that the mother of the detenu has filed the captioned HCP



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assailing the impugned preventive detention order.

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4. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.283 of 2023 on the file of Kumbakonam East Police Station for alleged offences under Sections 294(b), 448, 353 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 3(1) of 'Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992' [hereinafter 'TNPPDL Act' for the sake of convenience and clarity] and 27(2) of Arms Act, 1959. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

5. In the final hearing Board today, Mr.M.Seenisulthan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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6. In the support affidavit qua captioned HCP several points have been raised but learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on one point and that one point is subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed.

7. In support of this contention, learned counsel for petitioner drew our attention of this Court to one portion of paragraph 3 and one portion of paragraph 5 in the grounds of the impugned preventive detention order which read as follows:

'3..... In connection with this incident, based on the written complaint of Thiru.Srinivasan, the Sub Inspector of Police, Kumbakonam East Police Station registered a case in Kumbakonam East Police Station Crime No.283 of 2023 under Sections 294(b), 448, 353, 506(ii) of Indian Penal Code and 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1984 and 27(2) of Arms Act, 1959 at 18.30 hours on 01.06.2023. On receipt of information, the Inspector of Police, Kumbakonam East Police Station, immediately took up investigation of the case.....'



5.....Moreover, in similar case registered in Kumbakonam West Police Station Crime No.1225 of 2021 under Sections 341, 294(b), 392 and 506(ii) of Indian Penal Code read with Section 27(1) of Arms Act 1959 condition bail was granted to the accused Thiru.Praveenkumar by the Judicial Magistrate No.I Court, Kumbakonam in Criminal Miscellaneous Petition No.3545/2021, dated 04.10.2021. Hence, there is a real possibility of his (Thiru.Mohamed Thoufick) coming out on bail by filing another bail petition for the above said Ground case before the appropriate Court, since, bails are granted by the Courts in such cases, if he comes out on bail, he will indulge in further activities, which will be prejudicial'

8. Adverting to the aforesaid portions, learned counsel submitted that first extracted portion gives details of the ground case and second extracted portion gives details of the similar case that has been relied on by the Detaining Authority for arriving at subjective satisfaction as regards imminent possibility of detenu being enlarged on bail.

9. Elaborating on this submission, learned counsel submitted that a compilation of aforementioned two extracted portions will show that the ground case is triable exclusively by Sessions Court inter alia



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owing to Section 8 of TNPPDL Act and Section 27(2) of the Arms Act, 1959, whereas the similar case is a bail order granted by a learned Magistrate.

10. Learned counsel also drew our attention of this Court to order dated 06.06.2023 made by a learned Magistrate in CrI.M.P.No.412 of 2023 (Judicial Magistrate No.I, Kumbakonam) wherein detenu's bail petition in the ground case was dismissed by the Magistrate saying that the detenu has to approach the Sessions Court as the alleged offences are triable by Sessions Court only.

11. The aforementioned point turns heavily on the records before us and therefore, learned Prosecutor really does not have much of a say.

12. We have carefully considered the rival submissions.

13. In the light of the Detaining Authority having relied on a bail order granted by a learned Magistrate to record the subjective



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satisfaction that there is possibility of Sessions Judge granting bail in cases which are triable exclusively by Sessions Judges under Special Acts, the subjective satisfaction is clearly flawed as rightly argued by learned counsel for HCP petitioner. This means that the impugned preventive detention order is vitiated and becomes liable for being dislodged in the habeas legal drill on hand.

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.06.2023 bearing P.D.No. 38 of 2023 made by the second respondent is set aside and the detenu Thiru.Mohamed Thoufick, aged 25 years, son of Thiru.Kamaludeen, 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.)
19.10.2023

Index : Yes/No
Neutral Citation : Yes/No
ps

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



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- 1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
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St.George Fort,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Inspector of Police,
Kumbakonam East Police Station,
Kumbakonam,
Thanjavur District.
- 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 6.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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