



H.C.P(MD)No.1044 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **07.11.2023**

Coram

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

H.C.P(MD)No.1044 of 2023

Kumar

.. Petitioner

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

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

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records pertaining to the impugned detention order of the 2nd respondent in detention order No. 36/2023 dated 16.06.2023 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the detenu namely Rajasekar Son of Kumar aged about 30 years, who is detained at Central Prison, Madurai Before this Court and set him at liberty.



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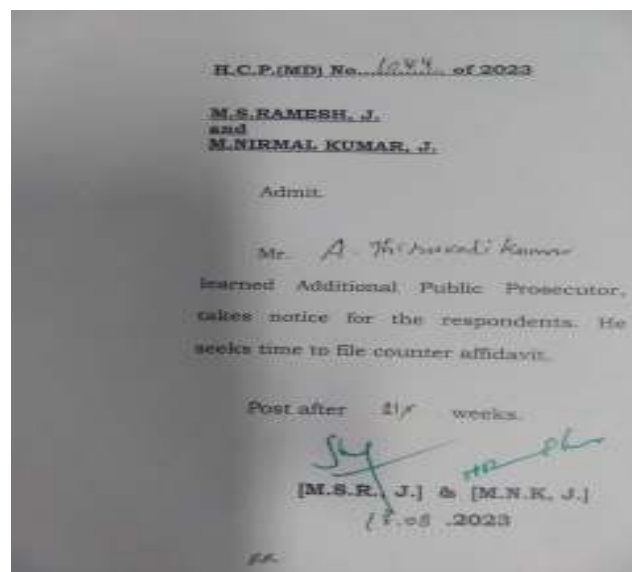
For Petitioner : Mr.K.Arunraj

WEB COPY 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 18.08.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



2. It has now become necessary to set out a thumb nail sketch of factual matrix and we do so in the paragraphs infra.



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3. Today, the captioned matter is in the Fnal Hearing Board.

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4. Mr.K.Arunraj, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by the father of the detenu assailing a 'preventive detention order dated 16.06.2023 bearing Detention Order No.36 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 but we find that 'Station House Officer of Palani Town Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

6. Impugned preventive 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.187 of 2023 on the file of Palani Town Police Station registered under Sections 457 and 394 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] which was subsequently altered into Section 457 and 397 IPC, again altered into Sections 457, 397, 120(B), 411 IPC and again altered into Sections 457, 395, 397, 120(B) and 411 IPC. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

8. Learned counsel for HCP petitioner 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 flawed. To buttress this argument, learned counsel for petitioner drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:



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'5..... However, in a similar case ie., Veda sandur Police Station Cr.No.367/2022 u/s.395, 457 IPC @ 120(B), 109, 395, 397, 457 IPC which is unrelated to this accused Rajasekar, bail was granted to an accused by name Hari, S/o.Sampath by the Court of District Principal and Sessions Judge, Dindigul vide Cr.M.P.No.1423 of 2023, dated 10.04.2023. Hence, I infer that there is a real possibility of his (Rajasekar) coming out on bail in the 4th adverse case and ground case registered against him before the same or higher Courts.....'

9. Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 10.04.2023 made in Cr.M.P.No.1423 of 2023 on the file of Principal and Sessions Judge, Dindigul' [hereinafter Hari's bail order for the sake of brevity].

10. Learned counsel for petitioner submitted that Hari's bail order has been furnished to the detenu as part of the grounds booklet and a careful perusal of the same brings to light that in Hari's case, as many as four co-accused viz., A2, A4, A13 and A15 were granted bail by the High Court vide Crl.O.P.(MD)No.4129 of 2023 and 4169 of 2023, dated 14.03.2023 and



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08.03.2023 respectively. Therefore, the comparison is bad/flawed is learned counsel's say.

11. In response to the above argument, learned Prosecutor submitted to the contrary.

12. Learned Prosecutor submitted that the alleged offences in Hari's case and the ground case are broadly comparable.

13. We have carefully considered the rival submissions.

14. This Court has repeatedly held that as regards comparing a ground case with another case bail order it is not merely the alleged offences but it is the determinants/parameters which weighed in the mind of the bail Court for granting discretionary relief of bail. In this view of the matter, it is clear that in Hari's case, one of the main determinants that has weighed in the mind of the bail Court to grant the discretionary relief of bail is, as many as four co-accused viz., A2, A4, A13 and A15 were granted bail by the High Court vide CrI.O.P.(MD)No.4129 of 2023 and 4169 of 2023, dated 14.03.2023 and 08.03.2023 respectively whereas in the case on hand co-accused has not been



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released on bail. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. If such subjective satisfaction is flawed, the consequence is the impugned preventive detention order gets vitiated and becomes liable for being dislodged in a habeas legal drill. This means that the impugned preventive detention order in the captioned HCP also deserves to be dislodged in the habeas legal drill on hand.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.06.2023 bearing Detention Order.No.36 of 2023 made by the second respondent is set aside and the detenu Thiru.Rajasekar, aged 30 years, son of Kumar, 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.)
07.11.2023

Index : Yes
Neutral Citation : Yes
vsm

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



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- To
- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Dindigul District, Dindigul.
 - 3.The Superintendent of Prison,
Central Prison,
Madurai.
 - 4.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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R.SAKTHIVEL, J.,

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