



H.C.P(MD)No.1045 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.1045 of 2023

Murugesan

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai – 600009.

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

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

... Respondents

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 passed by the 2nd respondent made in his proceedings in M.H.S.Confdl No.45/2023 dated 12.05.2023 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the detenu namely Sankarasubbu son of Murugesan aged about 23 years who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.



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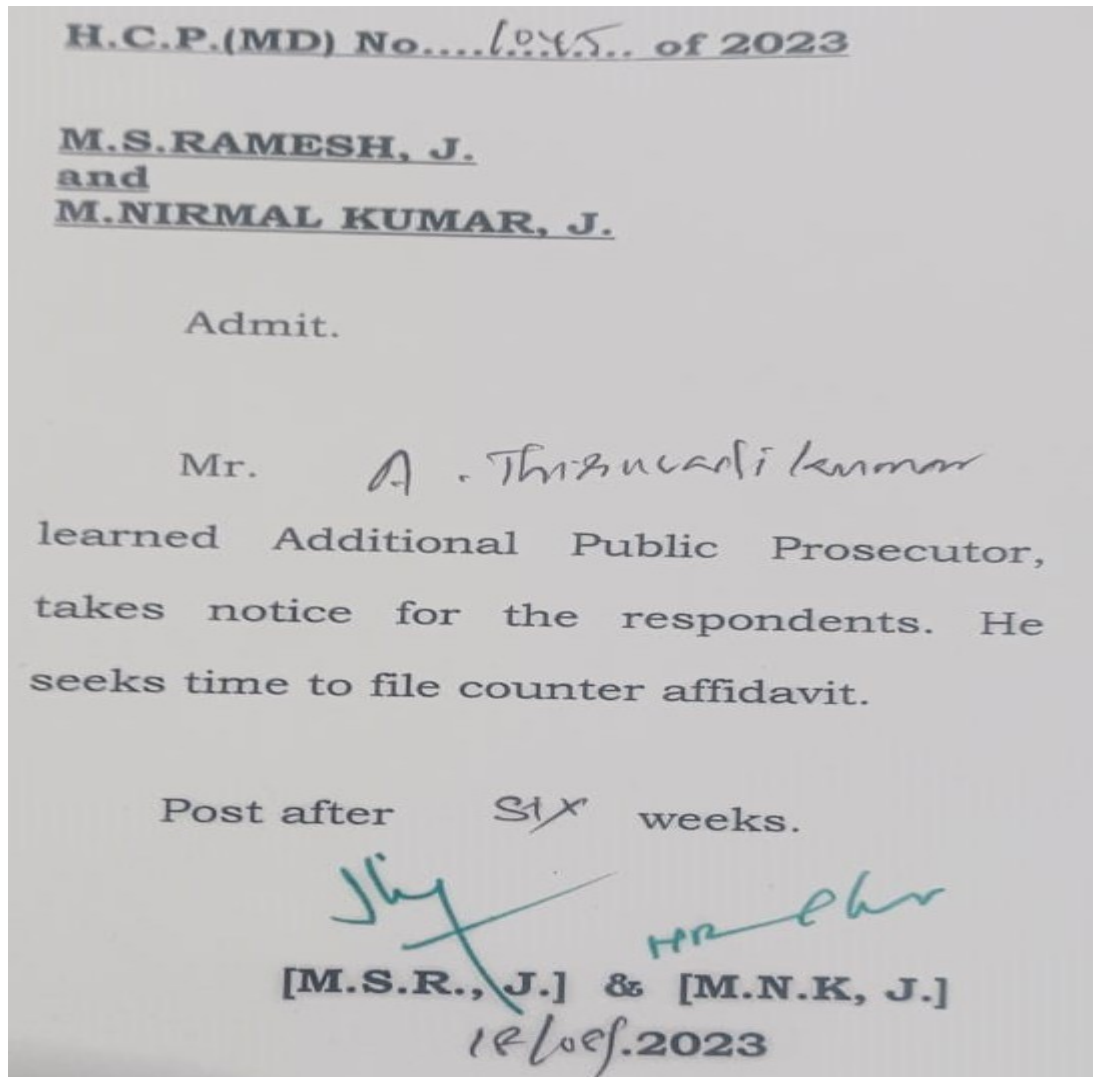
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For Petitioner : Mr.K.Arunraj
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 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.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 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the father of the detenu assailing the 'preventive detention order dated 12.05.2023 bearing reference M.H.S.Confdl No.45/2023' [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 Panagudi 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 five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.239 of 2023 on the file of Panagudi Police Station, for alleged offences under Sections 341, 294(b), 387 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



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 Thangapandi in Cr.M.P.No.6458/2020 on 26.11.2020 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is very likely of Thiru.Sankarasubbu coming out on bail in Panagudi Police Station Crime Number 239/2023 since bails are granted by the appropriate courts in such cases.'

9. Learned counsel submitted that aforementioned bail order in Thangapandi's case has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned Thangapandi's case, learned counsel submitted that in Thangapandi's case, bail was granted on the ground that the Public Prosecutor had not raised any serious objection 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 alleged offence/alleged charge in both cases i.e., ground case and Thangapandi's case bail order are broadly comparable.

11. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as the similar case relied on by the detaining authority is not similar because there was no bail petition pending at the time of passing the impugned preventive detention order and therefore, the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail, is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.05.2023 bearing reference M.H.S.Confdl No. 45/2023 made by the detaining authority is set aside and the detenu Thiru.Sankarasubbu, aged 23 years, son of Thiru.Murugesan, is directed



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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, Palayamkottai.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai – 600009.

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

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

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.1045 of 2023
DATED : 30.10.2023