



HCP(MD)No.1063 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1063 of 2023

Mariyammal

: Petitioner

Vs.

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

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

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

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue 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 P.D.No.48/2023 dated 26.07.2023 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



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Pandidurai, S/o.Kaliyamoorthy, Male, aged about 59 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

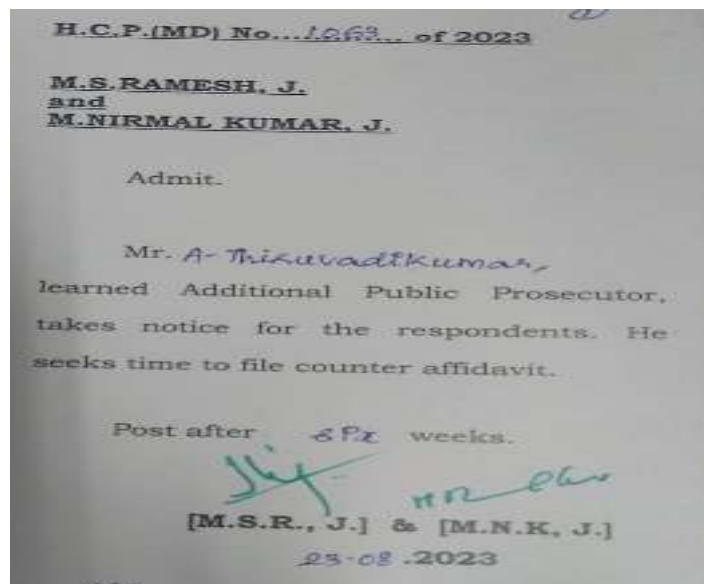
For Respondents : Mr.A.Thiruvadi Kumar

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 23.08.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





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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.M.Karunakaran, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP has been filed by wife of the detenu assailing a 'preventive detention order dated 26.07.2023 bearing reference P.D.No. 48/2023' [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 Pandanallur 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 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.363 of 2023 on the file of Pandanallur Police Station registered under Sections 452, 294(b), 324 and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] r/w Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1984 which was subsequently altered into Sections 452, 294(b), 324 and 307 IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.



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8. In the support affidavit *qua* captioned HCP though several grounds have been raised, learned counsel for HCP petitioner predicated his campaign against the impugned Preventive Detention Order in the final hearing board on one point and the one point is that the subjective satisfaction arrived at and recorded by the Detaining Authority is impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph No.5 of the grounds of impugned preventive detention order, which reads as follows:

'5.Thirumathi.Mariyammal, wife of the accused Thiru.Pandidurai is taking action to take out her husband Thiru.Pandidurai on bail from the above said ground case registered in Pandanallur Police Station Crime Number, 363/2023, under Sections 452, 294(b), 324 and 307 of Indian Penal Code read with Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1984 altered into Sections 452, 294(b), 324 and 307 of Indian Penal Code and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 of by filing another bail applications before the appropriate Court.....'

9. Adverting to the aforesaid portion, learned counsel submitted that there is no material to support the aforementioned averment in the grounds



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of impugned preventive detention order, which is one of the determinant on the basis of which subjective satisfaction *qua* imminent possibility of detenu being enlarged on bail has been recorded. As the above points turns heavily on records before this Court, learned State Additional Public Prosecutor really does not have much of say.

10. We have carefully considered the aforementioned submissions and we find that the aforementioned averment is not supported by any documents. This leads to two points which vitiated the impugned preventive detention order. First point is non-application of mind as the detaining authority has made an averment regarding the steps being taken by the wife of the detenu for taking him out on bail without any material before the detaining authority. The second point is the subjective satisfaction recorded by the detaining authority *qua* imminent possibility of detenu being enlarged on bail is impaired. As the impugned preventive detention order is vitiated on the twin grounds set out herein, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in this habeas drill on hand.



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 26.07.2023 bearing reference P.D.No. 48/2023 made by the second respondent is set aside and the detenu Thiru.Pandidurai, male, aged 59 years, son of Kaliyamoorthy, 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, Thiruchirappalli.

