



H.C.P(MD)No.1088 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.1088 of 2023

A.Kala

.. Petitioner

VS

1.State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

.. Respondents

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 connected with the detention order passed in P.D.No.36/2023 dated 24.07.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely



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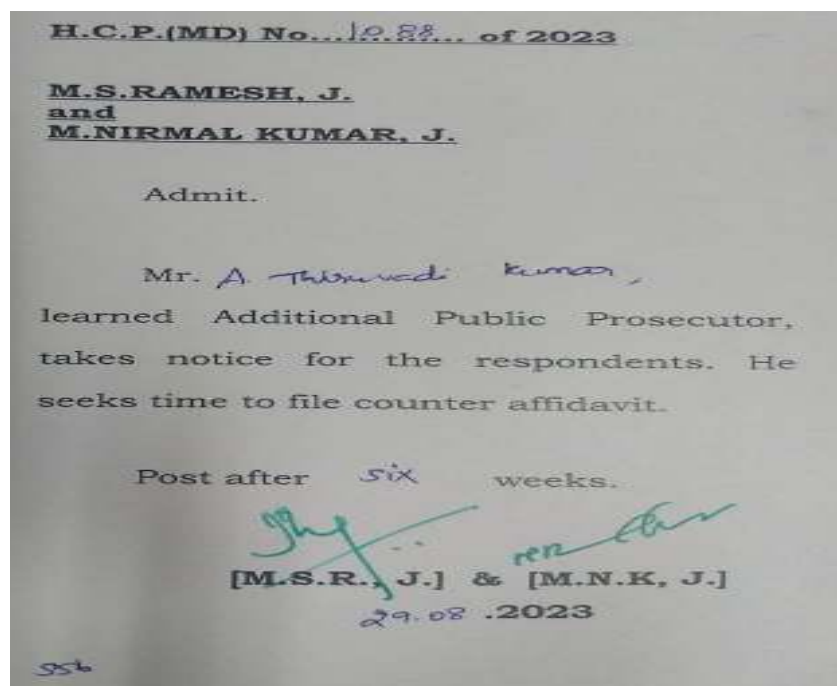
the petitioner's husband ie., Anbu @ Anbazhagan, son of Swaminathan aged about 36 years, now detained at the Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
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 29.08.2023, 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 thumb nail sketch of factual matrix and we do so in the paragraphs infra.

3. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

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

5. Captioned HCP has been filed by the wife of the detenu assailing a 'preventive detention order dated 24.07.2023 bearing P.D.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 Aralvoimozhy 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.



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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 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.145 of 2023 on the file of Arlvoimozhy Police Station registered under Sections 341, 342, 294(b), 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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



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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 7 of the grounds of impugned preventive detention order which reads as follows:

'7..... In a similar case registered in Suchindrum P.S. Cr.No.18/2022 u/s.294(b), 302 IPC r/w 109 IPC @ 147, 148, 294(b), 302 IPC r/w 109 IPC, the accused Jegatheesh @ Jegatheesan was granted condition bail as per the orders of the Hon'ble Principal Sessions, Kanniyakumari District at Nagercoil issued in bail application in CrI.M.P.No.937/2022 dated 28.02.2022. Since bail is granted in such cases by the Courts, the accused Anbu @ Anbazhagan may file bail application in the lower Court or higher Court and there is a real possibility that he may come out on bail.....'

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 28.02.2022 made in Cr.M.P.No.937 of 2022 on the file of Principal Sessions Court, Kanniyakumari District at Nagercoil' [hereinafter Jegatheesh @ Jegatheesan's bail order for the sake of brevity].



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WEB COPY **10.** Learned counsel for petitioner submitted that Jegatheesh @ Jegatheesan'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 Jegatheesh @ Jegatheesan's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Jegatheesh @ Jegatheesan, whereas in the case on hand, even according to the impugned preventive detention order there are two adverse cases. 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 Jegatheesh @ Jegatheesan'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 Jegatheesh @ Jegatheesan'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, Jegatheesh @ Jegatheesan did not have bad antecedents i.e., there was no previous case for Jegatheesh @ Jegatheesan whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there are two adverse cases for the detenu. 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.



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15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.07.2023 bearing P.D.No.36 of 2023 made by the second respondent is set aside and the detenu Thiru.Anbu @ Anbazhagan, aged 36 years, son of Swaminathan, 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, Palayamkottai.



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- To
- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat,
Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
 - 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
 - 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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