



H.C.P(MD)No.1111 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.1111 of 2023**

A.Meenakshisundaram

... Petitioner

vs.

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

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

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

... Respondents

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 M.H.S.Confdl No.55/2023 dated 21.05.2023 on the file of the 2<sup>nd</sup> respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's son i.e., Aathiganesh, aged about 23 years, S/o. Meenatchisundaram, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.



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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 04.09.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order in the Admission Board:

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**M.S.RAMESH, J.**  
**and**  
**M.NIRMAL KUMAR, J.**

Admit.

Mr. A. Thiruvadi Kumar  
learned Additional Public Prosecutor,  
takes notice for the respondents. He  
seeks time to file counter affidavit.

Post after 21 weeks.

[M.S.R., J.] & [M.N.K, J.]  
04/09/2023



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.N.Pragalathan, 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 21.05.2023 bearing reference M.H.S.Confdl No.55 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 and we find that Station House Officer of Mukkudal 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 four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.60 of 2023 on the file of Mukkudal Police Station, for alleged offences under Sections 341, 294(b), 307 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. Though several points have been raised in the support affidavit qua captioned HCP, in the final hearing board, learned counsel for HCP petitioner predicated his campaign against the impugned



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preventive detention order on the point that a similar case [Petchimuthu's case bail order dated 23.03.2023 in Cr.M.P.No.3741/2023] has not been furnished to the detenu in the grounds booklet though Petchimuthu's case bail order has been specifically referred to for arriving at the subjective satisfaction as regards imminent possibility of detenu being enlarged on bail in the ground case namely, Crime No.60 of 2023 on the file of Mukkudal Police Station for alleged offences under Sections 341, 294(b), 307 and 506(ii) of IPC.

9. In response to the aforementioned argument, learned Prosecutor submitted that other similar cases which have been referred to by the detaining authority for arriving at the subjective satisfaction as regards imminent possibility of detenu being enlarged on bail with regard to adverse cases have been furnished to the detenu.

10. We carefully considered the rival submissions.

11. We noticed that a portion of paragraph 6 of the grounds of the impugned preventive detention order is relevant and it reads as follows:



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*'6. .... I am also aware that in a similar case bail has been granted to Petchimuthu in Cr.M.P.No, 3741/2023 on 23.03.2023 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is very likely of Thiru.Aathiganesh coming out on bail in Mukkudal Police Station Crime Number 60/2023; since bails are granted by the appropriate courts in such cases. ....'*

12. Perusal of the aforementioned portion of the grounds of impugned preventive detention order makes it clear that as regards the ground case, the detaining authority has specifically relied on Petchimuthu's case bail order for arriving at / recording the subjective satisfaction as regards imminent possibility of detenu being enlarged on bail but this bail order has not been furnished to the detenu. This means that the detenu's right to make an effective representation being sanctus constitutional right ingrained in Clause (5) of Article 22 of the Constitution of India has been impaired. Impairment of Article 22(5) rights will mean that the impugned preventive detention order is vitiated and it becomes vulnerable and liable for being dislodged in the habeas legal drill at hand.



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13. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.05.2023 bearing reference No.M.H.S.Confdl No.55/2023 made by the detaining authority is set aside and the detenu Thiru.Aathiganesh aged 23 years, son of Thiru.Meenatchisundaram, 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.)  
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,  
State of Tamilnadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 600 009.

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

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



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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.1111 of 2023**  
**DATED : 30.10.2023**