



H.C.P(MD)No.1112 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2023**

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Coram

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

H.C.P(MD)No.1112 of 2023

Sangapillai

.. Petitioner

VS

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

.. 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 of the respondent No.2 in C.No. 64/Detention/C.P.O/T.C/2023 dated 05.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Sangapilli, son of Ponnangnan, aged about 66 years, now confined as 'Sexual



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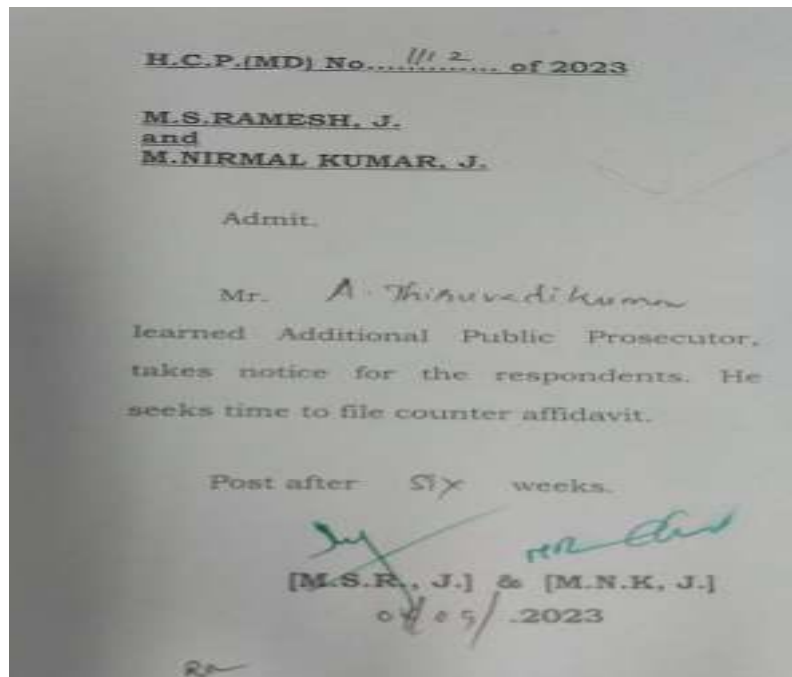
Offender' at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Ramesh Kumar
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 Coordinate Division Bench made the following order in the Admission Board:





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WEB COPY 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 Fnal Hearing Board.

4. Mr.S.Ramesh Kumar, 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 the detenu assailing a 'preventive detention order dated 05.07.2023 bearing C.No. 64/Detention/C/P.O/T.C/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 Tiruchirappalli Fort All Women 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes the sole substratum of the impugned preventive detention order is Crime No.12 of 2023 on the file of Tiruchirappalli Fort All Women Police Station registered under Sections 5(l), 5(j)(ii) r/w 6(1) of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' 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



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:

'5. I am aware that Sangapillai is in remand in Fort A.W.P.S. Cr.No.12/2023. He has filed a bail petition before the sessions Judge, Mahila Court, Tiruchirappalli in Cr.M.P.No.939 of 2023 and the same was dismissed on 27.06.2023. In a similar case registered in Tiruchirappalli Cantonment AWPS Cr.No. 961/2002 u/s366 IPC, 5(l) and 6(1) of Protection of Children from Sexual Offences Act 2012, bail was granted to the accused P.Mahendran, son of Palanisamy, who was remanded on 26.06.2022 by the Sessions Judge, Mahila Court, Tiruchirappalli in Cr.M.P.No.836/2022, dated 02.08.2022. Hence, I infer that there is a real possibility of Sangapillai coming out on bail by filing another bail petition before the appropriate Court.....

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 02.08.2022 made in Cr.M.P.No.836 of 2022 on the file of Session Judge, Mahila Court, Tiruchirappalli' [hereinafter Mahendran's bail order for the sake of brevity].



10. Learned counsel for petitioner submitted that Mahendran'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 Mahendran's case, the petitioner is young boy aged 20 years old and there was no objection from the defacto complainant, whereas in the case on hand, even according to the impugned preventive detention order the detenu is 66 years old. 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. We have carefully considered the rival submissions.

13. 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 Mahendran'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, Mahendran is young boy aged 20 years old and there was no objection from the defacto complainant, whereas in the case on hand, even according to the impugned preventive detention order the detenu is 66 years old. Therefore, we have no difficulty in sustaining the



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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.

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.07.2023 bearing C.No. 64/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Sangapillai, aged 66 years, son of Ponnangnan, 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, Tiruchirappalli.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

vsm

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City.
- 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
- 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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