



H.C.P(MD)No.1115 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **07.11.2023**

Coram

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

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Arilda

.. Petitioner

VS

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

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

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

4. The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi 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 passed in H.S.(M).Confdl.No.78/2023 dated 21.06.2023 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



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namely Maria Antony Pitchaiah Titus aged about 25 years, S/o.Rosary Fernando, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Kumaresan
for Mr.B.Muniyandi

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the mother of the detenu assailing a 'preventive detention order dated 21.06.2023 bearing H.S.(M).Confdl.No. 78/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, the fourth respondent 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.

2. 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



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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.

3. 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.232 of 2023 on the file of Thoothukudi South Police Station for the alleged offences under Sections 448, 294(b), 427, 307 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.

4. Mr.B.Kumaresan, learned counsel representing the counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP was listed in the Admission Board before another Coordinate Hon'ble Division Bench on 05.09.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:-



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6. Though very many points have been raised in the support affidavit qua captioned HCP, learned counsel for HCP petitioner drew our attention to a portion of paragraph 8 of the grounds of impugned preventive detention order, which reads as follows:

'8..... I am aware that the accused Maria Antony Pitchaiah Titus was arrested in the ground case on 01.06.2023 and produced before the Court of Judicial Magistrate No.I., Thoothukudi on the same day and forwarded to judicial custody up to 15.06.2023 and lodged in Thoothukudi District Jail at Perurani. Further his remand was extended up to 28.06.2023.....'

7. Adverting to the aforementioned portion, learned counsel for HCP petitioner submitted that the Detaining Authority has recorded the fact that the detenu was produced before Judicial Magistrate I, Thoothukudi. Though



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the Detaining Authority has relied on this remand aspect of the matter *qua* ground case in the impugned preventive detention order, the copy of the remand order has not been furnished to detenu.

8. In response to the aforementioned argument of learned counsel for HCP petitioner, learned State Additional Public Prosecutor submitted to the contrary. Learned Additional Public Prosecutor submitted that the remand order has been furnished. This means that reference of the learned Additional Public Prosecutor is to the order of extension up to 28.06.2023. This means that the original remand order remanding the detenu up to 15.06.2023 has not been furnished to the detenu. This in effect means that the right of the detenu to make an effective representation has been impaired. This Court has repeatedly held in a long line of authorities that right of the detenu to make an effective representation *qua* an impugned preventive detention order is a constitutional safeguard which has been ingrained in Clause (5) of Article 22 of Constitution of India and this Court has also held that impairment of constitutional right which is so sanctus vitiates an impugned preventive detention order. This is one such case where the right of the detenu to make an effective representation has been impaired vitiating the impugned preventive detention order and leaving it vulnerable for being dislodged in this habeas legal drill on hand.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.06.2023 bearing H.S.(M).Confdl.No. 78/2023 made by the second respondent is set aside and the detenu Thiru.Maria Antony Pitchaiah Titus, aged 25 years, son of Thiru. Rosary Fernando, 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
PKN

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 Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.



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4. The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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and
R.SAKTHIVEL, J.

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