



H.C.P(MD)No.1136 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.11.2023

Coram

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

H.C.P(MD)No.1136 of 2023

Sivabala

.. Petitioner/Wife of the detenue

VS

1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli 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 records
pertaining to the impugned detention order M.H.S.Confdl No.57 of
2023 dated 02.06.2023 passed by the second respondent is illegal and



H.C.P(MD)No.1136 of 2023

set aside the same by setting the detenu by name M.Karthick, S/o.Muthuramalingam, aged 29 years and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli District.

For Petitioner : Mr.A.Arputharaj
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 12.09.2023 and the Hon'ble Predecessor Coordinate Division Bench made the following order and a scanned reproduction of the same is as follows:



H.C.P(MD)No.1136 of 2023

H.C.P.(MD) No.1136 of 2023

S.S.SUNDAR, J. ✓
and
D.BHARATHA CHAKRAVARTHY, J.

Admit.

2. Mr.A.Thiruvadi Kumar,
learned Additional Public Prosecutor,
takes notice for the respondents and
seeks time to get instructions.

3. Post after four weeks.

mmnday
[S.S.S.R., J.]

D. B. C.
[D.B.C., J.]

12.09.2023

krk

Ⓟ
12/9/23



H.C.P(MD)No.1136 of 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, post service qua respondents captioned HCP is before this Bench in the Final Hearing Board.

4.Mr.A.Arputharaj, learned counsel on record for HCP petitioner (wife of the detenu) and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor are before us.

5.Short facts are that HCP petitioner's spouse 'one Thiru M.Karthick, aged 29 years, S/o.Muthuramalingam' [hereinafter 'detenu' for the sake of brevity and convenience] is now incarcerated; that 'a preventive detention order dated 02.06.2023 bearing M.H.S.Confdl.No. 57 of 2023' [hereinafter 'impugned preventive detention order' for the sake of clarity] was clamped qua detenu; that impugned preventive detention order has been made by the second respondent i.e., juridistical District Collector cum District Magistrate, Tirunelveli, Tirunelveli District [hereinafter referred to as 'Detaining Authority' for



H.C.P(MD)No.1136 of 2023

the sake of convenience]; that impugned preventive detention order has been clamped qua detenu by resorting '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; that captioned HCP assailing the impugned preventive detention order was filed in this Court on 01.09.2023, listed in the Admission Board on 12.09.2023 and the abovementioned order was made in the Admission Board by Hon'ble Predecessor Coordinate Division Bench.

6. There are eight adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.49 of 2023 on the file of Moondradaippu Police Station for alleged offences under Sections 294(b), 387 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].



H.C.P(MD)No.1136 of 2023

Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

7.This Court having set out the factual matrix in a nutshell and having captured the trajectory the matter takes in reaching the final hearing board, now proceeds to examine the point urged by HCP petitioner. Though many grounds have been raised in the support affidavit qua captioned HCP, Mr.A.Arputharaj, learned counsel on record 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 the detenu being enlarged on bail is impaired.

8.Elaborating on this submission, learned counsel for petitioner drew the attention of this Court to a portion of the grounds of impugned preventive detention order i.e., a portion in paragraph 6 of the grounds of the impugned preventive detention order, which reads as follows:

'6.....I am also aware that there is real possibility for his coming out on bail in future by filing bail



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H.C.P(MD)No.1136 of 2023

application for the above case since in similar cases bails are granted by the appropriate courts. I am also aware that in this case bail has been granted to Thiru.Karthick's associate Nagasuman in Cr.M.P.No.6192 of 2023 on 10.05.2023 by the vacation Sessions Court Tirunelveli. I therefore infer that there is real possibility of Thiru.Karthick coming out on bail in Nanguneri Police Station Crime No.145 of 2023 since bails are granted by the appropriate courts in this case. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial

9.Adverting to the aforementioned portion, learned counsel submitted that 'bail order dated 10.05.2023 made in Cr.M.P.No.6192 of 2023 on the file of the Court of Sessions, Tirunelveli Division' [hereinafter referred to as 'Nagasuman's bail order' for the sake of convenience] has been furnished to the detenu as part of the grounds booklet. Referring to Nagasuman's bail order, learned counsel submitted that in Nagasuman's case there is nothing to demonstrate that there were adverse cases or there were bad antecedents for Nagasuman, whereas in the case on hand even according to the impugned preventive detention order, there are as many as eight adverse cases.



H.C.P(MD)No.1136 of 2023

10. In response to the aforementioned argument, learned Prosecutor pointed out that aforementioned Nagasuman is none other than a co-accused qua detenu in eighth adverse case.

11. We have carefully considered the rival submissions.

12. We find from a perusal of Nagasuman's bail order that, as rightly pointed out by learned counsel for HCP petitioner, there is no mention that there are bad antecedents for Nagasuman whereas in the case on hand even according to the impugned preventive detention order, there are as many as eight adverse cases. Therefore, though Nagasuman is a co-accused qua detenu in eighth adverse case, the comparison of the aforementioned 10.05.2023 bail order with the case on hand for arriving at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail is flawed as the parameters, dimensions and dynamics of the two bail drills are completely different. They are different because a person seeking bail with eight adverse cases cannot be equated with a person with no bad antecedents who has been granted bail. On this short point, we are convinced that the



H.C.P(MD)No.1136 of 2023

impugned preventive detention order gets vitiated owing to flawed subjective satisfaction as regards imminent possibility of detenu being enlarged on bail. This means that the impugned preventive detention order deserves to be interfered with and dislodged in this HCP legal drill.

13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.06.2023 bearing reference M.H.S.Confdl.No.57 of 2023 made by the second respondent is set aside and the detenu Thiru.Karthick, aged 29 years, son of Thiru.Muthuramalingam, 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.)
01.11.2023

Index : Yes/No
Neutral Citation : Yes/No
ps

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai, Tirunelveli District.



H.C.P(MD)No.1136 of 2023

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- To
- 1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
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Fort St. George,
Chennai – 600 009.
 - 2.The District Collector cum District Magistrate,
Tirunelveli,
Tirunelveli District.
 - 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
 - 4.The 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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H.C.P(MD)No.1136 of 2023

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

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