



H.C.P(MD)No.1140 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.1140 of 2023

M.Gomathi

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.

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

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.35 of 2023 dated 15.05.2023 and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband i.e., Mariappan, aged about 45 years, S/o. Ananthappan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.



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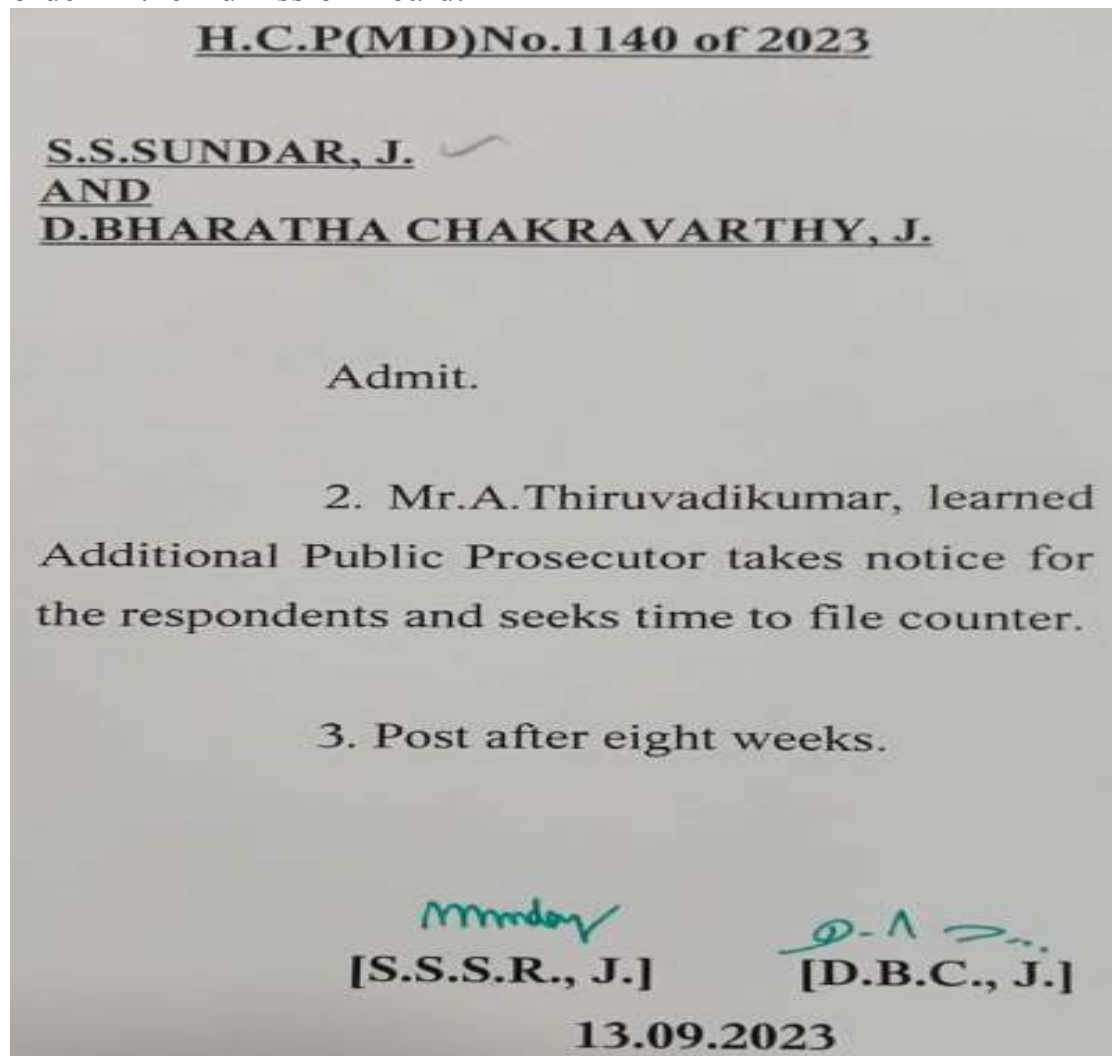
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For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 13.09.2023, a Hon'ble Predecessor Coordinate Division Bench made the following order in the Admission Board:





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 wife of the detenu assailing the 'preventive detention order dated 15.05.2023 bearing reference M.H.S.Confdl No.35 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 Kadayam 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.



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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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

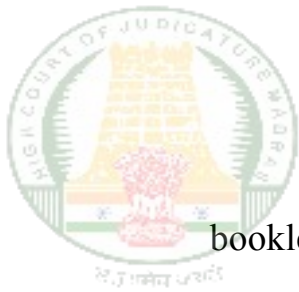
7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No. 139 of 2023 on the file of kadayam Police Station, for alleged offences under Sections 447 and 342 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Sections 5(m) and 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' 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. In the final hearing today, learned counsel 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 impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 6 of the grounds of detention and the relevant portion reads as follows:

'6. I am aware that Thiru.Mariappan is in remand in Kadayam Police Station Crime No.139/2023 and in this case he has not filed any bail application so far. I am also aware that there is real possibility for his coming out on bail in future by filing bail application for the above case since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Ganesan in CRMP No.762/2021 on 27.052021 by the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli. I therefore infer that there is real possibility of Thiru.Mariappan coming out on bail in Kadayam Station Crime No. 139/2023: since bails are granted by the appropriate courts in such cases.'

9. Learned counsel submitted that aforementioned bail order in '*Ganesan vs State*' [hereinafter '*Ganesan's case* bail order' for the sake of convenience] has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned *Ganesan's case* bail petition as well as bail order thereat i.e., *Ganesan's case* bail order in the grounds



booklet, learned counsel submitted that the aforementioned bail order dated 27.05.2021 made by learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction [qua imminent possibility of detenu being enlarged on bail] arrived at by the Detaining Authority is impaired.

10. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases i.e., ground case and *Ganesan's case* bail order are broadly comparable.

11. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at



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aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.05.2023 bearing reference No.M.H.S.Confdl No.35/2023 made by the detaining authority is set aside and the detenu Thiru.Mariappan aged 45 years, son of Thiru.Ananthappan, 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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.



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

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

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
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DATED : 30.10.2023