



H.C.P(MD)No.1186 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **07.11.2023**

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1186 of 2023

Amsavalli

... Petitioner

vs.

1.State: represented by

The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The District Collector/District Magistrate,
Thiruvarur District, Thiruvarur.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records from the second respondent in C.O.C.No.43/2023 dated 30.05.2023 by setting aside the said order of detention passed by the second respondent and setting the detenue namely, Santhosh, S/o.Muthaiyan aged about 28 years set him at liberty, now he is detained in the Central Prison, Trichy.

For Petitioner : Mr.M.Ramachandaran

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor



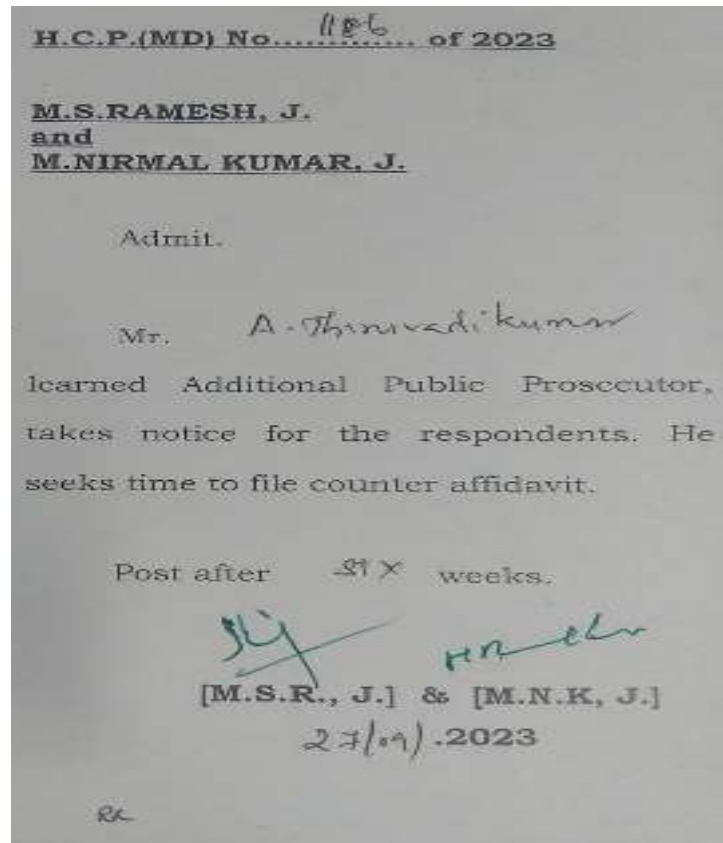
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ORDER

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[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 27.09.2023, 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.



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3. Today, the captioned matter is in the Final Hearing Board.

4. Mr.M.Ramachandaran, 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 wife of the detenu assailing the 'preventive detention order dated 30.05.2023 bearing reference C.O.C.No.43/2023' [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 Thiruthuraipoondi 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 'DRUG OFFENDER' within the meaning of Section 2(e) of Act 14 of 1982.

7. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.364 of 2023 on the file of Thiruthuraipoondi Police Station, for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No.61 of 1985)' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. 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:

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'6. However in similar case in Crime No.566/2021 u/s 8(c) r/w 20(b)(ii)(B) NDPS Act 1985 of Thiruthuraipoondi Police Station, bail was granted by the Additional District & Sessions Judge/Special Judge under EC Act Cases, Thanjavur in Cr.M.P.No.307/2021 dated 21.05.2021 to an accused by name Thiru.Ranjith @ Ranjithkumar, S/o.Rajendran.

Hence, I infer that there is real possibility of his (Thiur.Santhosh, Male aged 28/2023, S/o.Muthaiyan) coming out on bail by filing a bail application for the above case before the appropriate Court and higher Court.....'

9. A careful perusal of Ranjith @ Ranjithkumar's case bail order in the grounds booklet, more particularly, a paragraph thereat brings to light that the then prevailing Covid-19 situation had weighed in the mind of the learned Sessions Judge in granting bail. Relevant portion reads as follows:

'... Considering the restrictions of bail u/s.37(1) (b)(ii) of NDPS Act 1985, duration of custody, the contraband is in between quantity, considering the prevailing condition of Covid-19, this Court is inclined to enlarge the petitioners/A1 and A2 on interim bail....'

10. Learned Prosecutor submitted to the contrary by saying that alleged offences in Ranjith @ Ranjithkumar's case bail order and case on hand are broadly comparable.



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11. We carefully considered the rival submissions.

12. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Ranjith @ Ranjithkumar's case bail order would not apply to the case on hand as the impugned preventive detention order has been made on 30.05.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn was granted owing to then prevalent Covid-19 situation, is impaired leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

13. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.05.2023 bearing reference C.O.C.No.43/2023 made by the detaining authority is set aside and the



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detenu Thiru.Santhosh, aged about 28 years, son of Thiru.Muthaiyan, 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 / No
Neutral Citation : Yes / No
vsm

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

To

- 1.The State represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector/District Magistrate,
Thiruvaru District, Thiruvaru.
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 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.

vsm

ORDER MADE IN
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