



H.C.P(MD)No.1180 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.1180 of 2023

R.Murugan

... Petitioner

vs.

1. State of Tamil Nadu,
Rep.by the Additional Chief Secretary to Government,
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.

... 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 in H.S.(M) Confdl.No.81/2023 dated 10.07.2023 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 namely the petitioner's son i.e., Prakash, Male aged about 26 years son of Murugan now detained at Central Prison, Palayamkottai before the Court and set him at liberty.



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H.C.P(MD)No.1180 of 2023

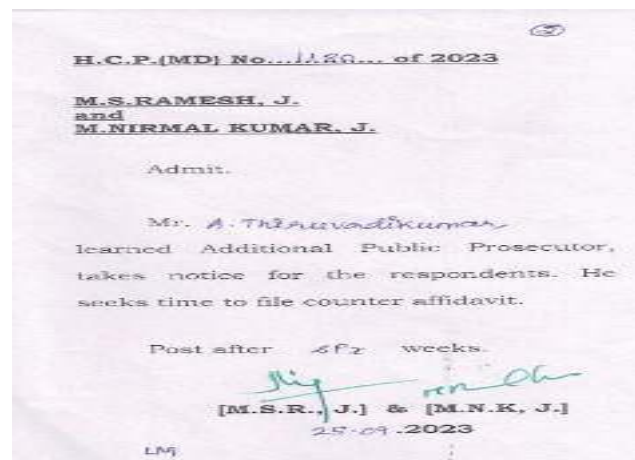
For Petitioner : Mr.N.Pragalathan

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 25.09.2023, a Hon'ble 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.



H.C.P(MD)No.1180 of 2023

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 HCP has been filed by the father of the detenu assailing a 'preventive detention order dated 10.07.2023 bearing reference H.S.(M) Confdl.No.81/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent District Collector and District Magistrate, Thoothukudi District, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of 'Thermal Nagar 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



H.C.P(MD)No.1180 of 2023

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] branding the detenu as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

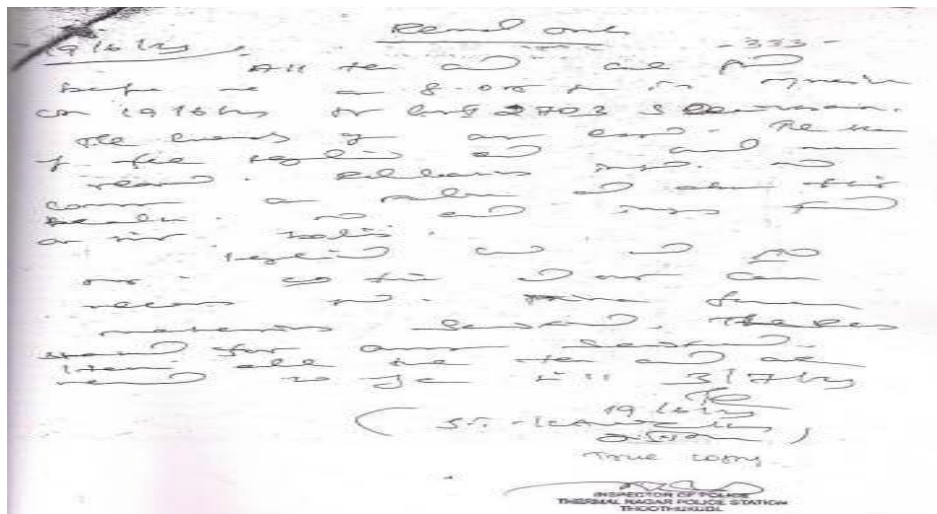
7. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.71 of 2023 on the file of Thermal Nagar Police Station, for the alleged offences under Sections 454, 457, 380 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8. Learned counsel for HCP petitioner projected the point that some of the pages in the grounds booklet furnished to the detenu are illegible. Elaborating on this submission, learned counsel for petitioner drew our attention to page No.333 which is a copy of initial remand order dated 19.06.2023 and submits that the initial remand order which is at page No.333 is not readable.



H.C.P(MD)No.1180 of 2023

9. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned page which contains remand order of the detenu is not readable. Scanned reproduction of page 333 is as follows:



10. The aforementioned point turns heavily on materials placed before us and therefore learned Prosecutor really does not have much of a say.

11. This means that the further submission of learned counsel for HCP petitioner that the right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired owing to aforementioned initial remand order copy furnished to detenu being not readable deserves to be sustained as such



H.C.P(MD)No.1180 of 2023

right is a sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction owing to the smudged / not readable copy of initial remand order. Therefore, the impugned preventive detention order is liable to be dislodged.

12. Before concluding by writing the operative paragraph of this order, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

13. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 10.07.2023 bearing reference H.S.(M) Confdl.No.81/2023 made by the second respondent is set aside and the detenu Thiru.Prakash, Male, aged 26 years, son of Thiru.Murugan 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
PKN



H.C.P(MD)No.1180 of 2023

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

1. The Additional Chief Secretary to Government,
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.
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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H.C.P(MD)No.1180 of 2023

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

PKN

ORDER MADE IN
H.C.P(MD)No.1180 of 2023

DATED : 07.11.2023