



H.C.P.(MD) No.1193 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.11.2023

CORAM

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

H.C.P. (MD) No.1193 of 2023

Arokiyamari

.. Petitioner

Vs.

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
Central Prison, Palayamkottai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in H.S(M) Confdl.No.36/2023 dated 27.02.2023 in detaining the detenu under 2(ggg) of Tamil Nadu Act 14 of 1982 as a Sexual Offender and quash the same and direct the respondent to produce the detenu

Page Nos.1/12



H.C.P.(MD) No.1193 of 2023

Devaraj, son of Petchimuthu aged about 32 years who is detained at Central Prison, Palayamkottai, before this Honble Court and set him at liberty.

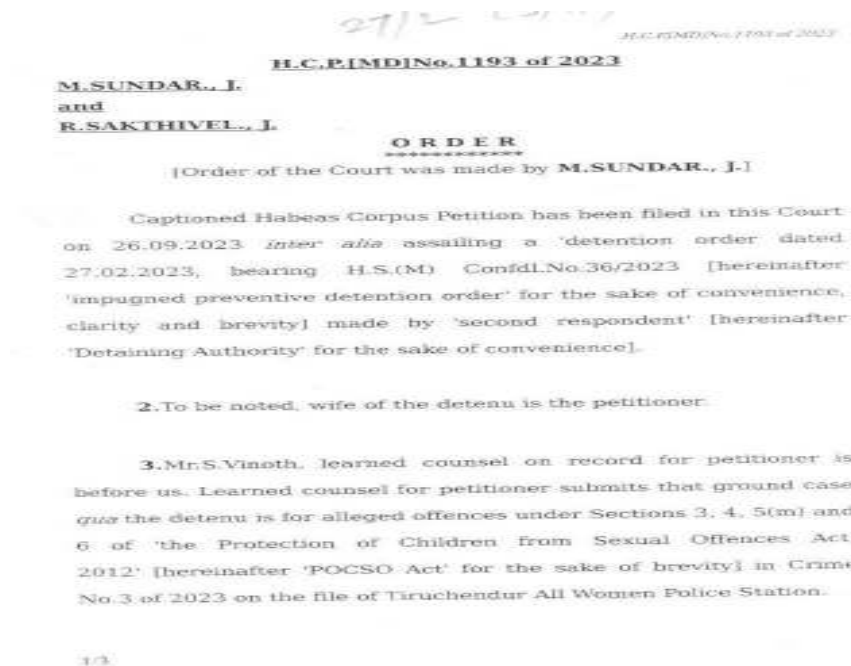
For Petitioner : Mr.S.S.Sundarapandian

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, convenience and clarity] was listed in the Admission Board before us on 04.10.2023 and we made the following order:





WEB COPY



H.C.P.(MD) No.1193 of 2023

H.C.P.(MD) No.1193 of 2023

4.The aforementioned impugned preventive detention order has been made on the premise that the detainee is a "Sexual Offender" under Section 2(ggg) of '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].

5.The impugned preventive detention order has been assailed *inter alia* on the ground that the Tamil translation of some of the documents have not been furnished.

6.*Prima facie* case made out for admission. Admit, Issue *Rule nisi* returnable by four [4] weeks.

7.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S., J.I] & [R.S.V., J.I]
04.10.2023

MR

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and we would plunge into the legal drill of testing the impugned preventive detention order in the habeas legal drill on hand. Suffice to say that aforementioned Admission Board order dated 04.10.2023 shall now be read as an integral part and parcel of this final order. It means that the short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also.



H.C.P.(MD) No.1193 of 2023

3. Mr.S.S.Sundarapandian, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph 5 of the aforementioned Admission Board order dated 04.10.2023, at the time of admission, learned counsel for HCP petitioner posited his argument on the point that Tamil translation of some of the documents relied on have not been furnished but today, in the final hearing board, learned counsel for petitioner changed his line of attack and learned counsel predicated his campaign against impugned preventive detention order on the point that the initial remand order qua ground case has been relied on by the detaining authority in the grounds of impugned preventive detention order but the same has not been furnished to the detenu causing infraction of constitutional right ingrained in Article 22(5) of the Constitution of India.

5. Elaborating on the aforementioned point, learned counsel drew our attention to a portion of paragraph No.6 of the grounds of impugned preventive detention order which reads as follows:

Page Nos.4/12



WEB COPY



H.C.P.(MD) No.1193 of 2023

'.....6. I am aware that the accused Devaraj was arrested in the ground case on 01.02.2023 and he was produced before the Sessions Judge Special Court for Exclusive Trial of cases under POCSO Act, Thoothukudi on 02.02.2023 and forwarded to Judicial Custody up to 16.02.2023 and he is lodged in Thoothukudi District Jail at Perurani.....'

Learned counsel submitted that the detaining authority has relied on the initial remand on 02.02.2023 but the same has not been furnished to the detenu as part of the grounds booklet.

6. In response to the aforementioned argument, learned Prosecutor submitted that the order extending the remand after the initial order of remand has been furnished to the detenu.

7. We carefully considered the rival submissions. In considering the rival submissions, we find that a similar/same point was dealt with by us in ***R.Selvi Vs. The Additional Cheif Secretary to Government and others***



H.C.P.(MD) No.1193 of 2023

reported in **2023/MHC/4778** (Neutral Citation of this Court i.e., Madras High Court).

8. A scanned reproduction of **Selvi's** case as reported in **2023/MHC/4778** is as follows:

2023/MHC/4778

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

Coram

THE HONBLE MR JUSTICE MEENADAR
and
THE HONBLE MR JUSTICE R.SAKTHIVEL

H.C.P.(MD) No.1193 of 2023

IL.Selvi 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,
Dindigul District,
Dindigul.

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

Respondents

Prayer:- Petitioner 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).Corrill No.75/2023 dated 14.06.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the status or body of the detainee



WEB COPY



H.C.P.(MD) No.1193 of 2023



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, Storm-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 detainee is a 'Goonda' within the meaning of Section 2(c) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of 'substantum of the impugned preventive detention order is Crime No.114 of 2023 on the file of Maruthapuram Police Station for the alleged offenders under Sections 294(b), 307 and 508(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.N.Pagalathan, 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 was listed in the Admissions Board before another Coordinate Hon'ble Division Bench on 01.09.2023 and an order was made in the Admissions Board and a scanned reproduction of the same is as follows:



6. Though very many points have been raised in the support affidavit (an captioned HCP, learned counsel for HCP petitioner drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention



WEB COPY



H.C.P.(MD) No.1193 of 2023



order, which reads as follows:

WEB COPY

3..... The offence committed by the accused Ramiah @ JGB Ramiah under Sections 294(b), 307 and 506(ii) IPC relating to abuse with filthy language in a public place, attempt to murder and criminal intimidation were punishable under Chapters XIV, XVI and XXII of the Indian Penal Code. He was produced before the Court of Judicial Magistrate No.11, Thoothukudi on 19.05.2023 and forwarded to judicial custody upon 03.06.2023 and lodged in Thoothukudi District Jail at Peruvazhi. Further his remand was extended up to 22.06.2023. The case is under investigation. "

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 H, Thoothukudi. Though 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. Learned counsel also submits that the detenu has sent a representation dated 25.08.2023 specifically requesting for the remand order but the same has not been furnished.



H.C.P.(MD) No.1100 of 2023

WEB COPY

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 22.06.2023. This means that the original remand order remanding the detenu up to 03.06.2023 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 that it 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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.06.2023 bearing H.S.(M)Confld No.75



WEB COPY



H.C.P.(MD) No.1193 of 2023

	
H.C.P.(MD) No.1193 of 2023	
of 2023 made by the second respondent is set aside and the detenu	
WITH C Thiru,Ramesh @ 2GB Ramesh, aged 28 years, son of Thiru Ganesan, 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.) 18.10.2023	
Index : Yes Neutral Citation : Yes vsn	
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.	
4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.	

Paragraphs 6 to 8 in *Selvi's* case constitute the crux and gravamen of the issue in the legal drill on hand.

9. In the light of *Selvi's* case principle, we have no hesitation in sustaining the submission of learned counsel for HCP petitioner that the sanctus constitutional right of the detenu which has been ingrained in Article 22(5) by way of a Constitutional safeguard has been breached.



H.C.P.(MD) No.1193 of 2023

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.02.2023 bearing reference H.S(M) Confdl.No.36/2023 made by the second respondent is set aside and the detenu Thiru.Devaraj, male, aged 32 years, son of Thiru.Petchimuthu 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

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



H.C.P.(MD) No.1193 of 2023

To

WEB COPY

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
Central Prison, Palayamkottai.
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.



WEB COPY



H.C.P.(MD) No.1193 of 2023

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

PKN

H.C.P.(MD) No.1193 of 2023

07.11.2023

Page Nos.12/12