



HCP(MD)No.1235 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1235 of 2023

Sundar alias Kottai Sundar

: Petitioner/Detenu

Vs.

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

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

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

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus, calling for the entire records connected with



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the detention order of the respondent No.2 in H.S.(M)Confdl No.100/2023 dated 04.08.2023 and quash the same and direct the respondents to produce the detenu by name Sundar alias Kottai Sundar, Son of Manthira Thevar aged about 22 years, now detained in Palaymkottai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.S.S.Sundarapandian

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.**]

When this 'Habeas Corpus Petition' [henceforth, referred to as 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 18.10.2023, the following order was made:

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(Order of the Court was made by M.SUNDAR, J.,)



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Adverting to proceedings dated 11.10.2023, Mr.S.S.Sundarapandian, learned counsel on record for petitioner expresses regret for missing the matter in the previous listing. However, learned counsel argues for admission today.

2. Captioned Habeas Corpus Petition has been filed in this Court on 27.09.2023 inter alia assailing a 'detention order dated 04.08.2023, bearing H.S(M)Confdl.No.100 of 2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].

3. To be noted, the detenu is the petitioner.

4. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 8(c) read with 20 (b) (ii) (B) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.70 of 2023 on the file of Masarpatti Police Station.

5. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders,



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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].

6. The impugned preventive detention order has been assailed inter alia on the ground that a representation, dated 02.09.2023 sent by the petitioner has not been considered.

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

8. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

[M.S.J.] [R.S.V.J.]

18.10.2023

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, this Court is not setting out the same again in this final order. Suffice to say that aforementioned Admission Board Order shall now be read as integral part and parcel of this order. This also means that short form, short references



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and abbreviations used in the Admission Board order will continue to be used in the instant final order also for the sake of brevity, convenience and clarity.

3. There is one adverse case and one ground case. Ground case has been registered against the petitioner/detenu under Sections 8(c) r/w. 20(b) (ii)(B) of NDPS Act in Crime No.70/2023 on the file of Tharuvaikulam Police Station. Subsequently, Inspector of Police, Masarpatti Police Station, Incharge : Tharuvaikulam Police Station took up the investigation. The impugned preventive detention order has been passed based on the aforesaid case.

4. At the time of admission of this HCP, the learned counsel for the petitioner/detenu has raised a point on the ground that a representation dated 02.09.2023 sent by the petitioner/detenu has not been considered. Today, in the final hearing board, learned counsel for the petitioner/detenu raised a point that the petitioner/detenu was arrested on 06.07.2023 and he was remanded to judicial custody upto 20.07.2023 and lodged in



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Thoothukudi District Jail at Perurani. The detaining authority has referred to and relied on the said remand order. But, the copy of the said order has not been furnished to the petitioner/detenu. Learned counsel drew our attention to a portion of paragraph 7 of the grounds of the impugned preventive detention order which reads as follows:

“ 7. I am aware that the accused Sundar @ Kottai Sundar was arrested in the ground case on 06.07.2023 and produced before the Judicial Magistrate Ottapidaram on the same day and forwarded to judicial custody up to 20.07.2023 and lodged in Thoothukudi District Jail at Perurani. Subsequently, his remand was extended up to 14.08.2023. ...”

5. Adverting to the aforementioned portion, learned counsel for the petitioner/detenu submitted that the detaining authority has recorded the fact that the petitioner/detenu was produced before the learned Judicial Magistrate, Ottapidaram on 06.07.2023 and remanded to judicial custody upto 20.07.2023. Though the detaining authority has relied on these remand aspects, the copy of the said remand order has not been furnished to the petitioner/detenu which has affected the rights of the petitioner/detenu to



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make an effective representation against the impugned preventive detention order. Hence, he prayed to allow this HCP and set aside the impugned preventive detention order.

6. In response to the aforesaid argument of the learned counsel for the petitioner/detenu, learned Additional Public Prosecutor submitted that the remand extension order has been furnished to the petitioner/detenu. He further submitted that the non-furnishing of copy of the remand order would not in any way affect the rights of the petitioner/detenu for making representation against the impugned preventive detention order. Accordingly, he prayed to dismiss this petition.

7. This Court has considered the rival submissions.

8. The detaining authority has specifically stated that the petitioner/detenu was produced before the learned Judicial Magistrate, Ottapidaram on 06.07.2023 and was remanded till 20.07.2023. But, the copy of the remand order has not been furnished to the petitioner/detenu.



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This means that original remand order remanding the petitioner/detenu upto 20.07.2023 has not been furnished to the petitioner/detenu. This in effect means that the right of the petitioner/detenu to make an effective representation has been affected.

9. This Court in *R.Selvi's* case [*R.Selvi Vs. State of Tamil Nadu rep. by the Additional Chief Secretary to Government, Home, Prohibition and Excise Department and others – Neutral Citation : 2023/MHC/4778*] has held as follows:

“8. ... 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



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and leaving it vulnerable for being dislodged in this habeas legal drill on hand.”

In view of the above, this Court is inclined to quash the impugned preventive detention order.

10. In the result, this Habeas Corpus Petition is allowed and the impugned preventive detention order dated 04.08.2023 bearing reference H.S.(M) Confdl No.100/2023 made by the second respondent is set aside and the petitioner/detenu Thiru.Sundar @ Kottai Sundar, male, aged 22 years, son of Thiru.Manthira Thevar, 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.]
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Index : Yes
Neutral Citation : Yes

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Post Script:

(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified 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,
State of Tamil Nadu, Fort St. George,
Chennai – 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. 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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