



HCP(MD)No.1196 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM :

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

HCP(MD)No.1196 of 2023

Shanmugam alias Venkatesh

... Petitioner

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 Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.

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

... 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 of the respondent No.2 in No.23/BCDFGISSSV/2023 dated 20.03.2023 and quash the same and direct the respondents to produce the detenu by name Shanmugam alias Venkatesh, son of Ganeshan, aged about 29 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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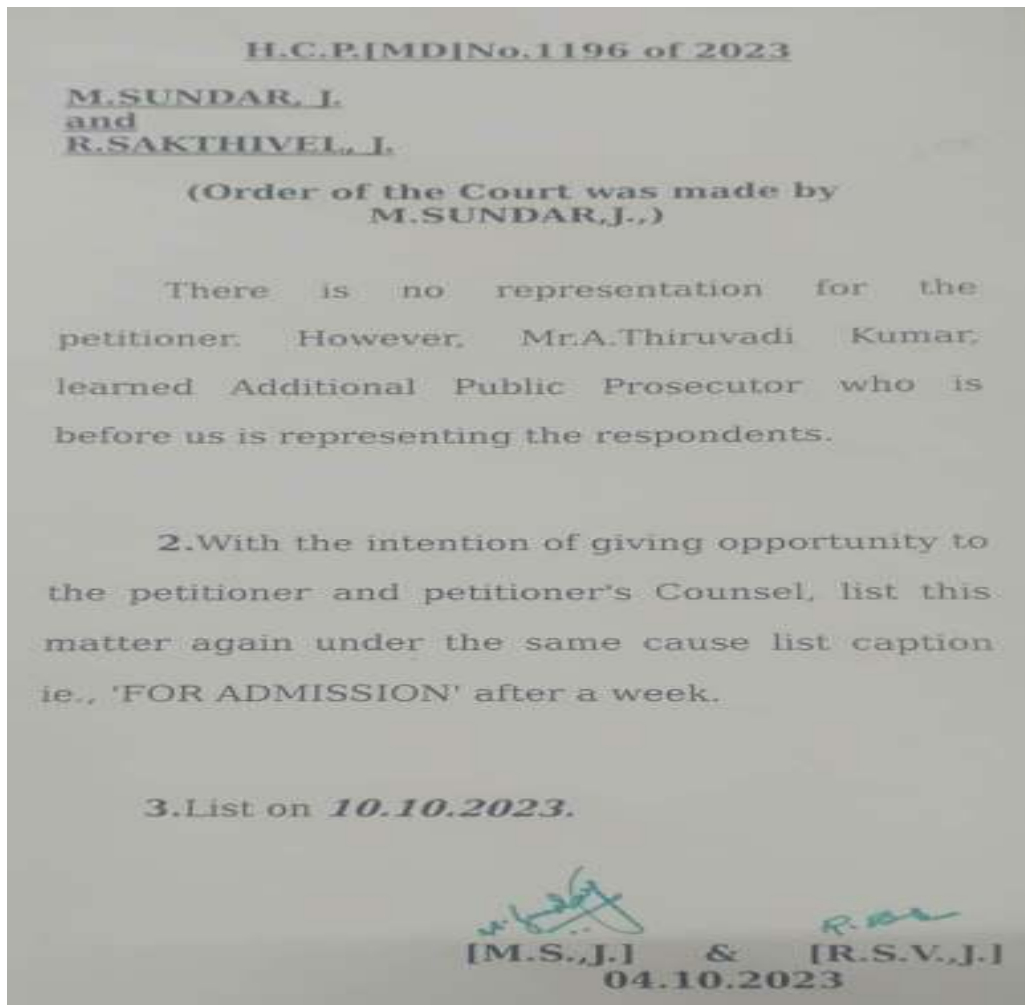
HCP(MD)No.1196 of 2023

For Petitioner : Mr.R.Vinoth Bharathi
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

This order has to be read in conjunction with and in continuation of orders / proceedings made in the previous four listings on 04.10.2023, 12.10.2023, 31.10.2023 and 20.11.2023 which read as follows:





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H.C.P.[MD]No.1196 of 2023

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M.SUNDAR, J.

and

R.SAKTHIVEL., J.

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

Mr.S.S.Sundarapandian, learned counsel for petitioner expresses regret for missing the matter in the last listing on 04.10.2023 but requests for an adjournment. Request acceded to.

2. List after a fortnight. List on 31.10.2023.

[M.S.,J.]

[R.S.V.,J.]

12.10.2023



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

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

No representation for the petitioner but Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor is before us.

2.With the intention of giving opportunity to the petitioner, learned Counsel for petitioner and the detenu, list this matter after a fortnight.

3.List on **20.11.2023.**


[M.S.,J.] & [R.S.V.,J.]
31.10.2023



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

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

Mr.S.Praveen, learned counsel representing the counsel on record for HCP petitioner requests for an adjournment citing difficulty for the counsel on record. Request acceded to. List three [3] weeks hence.

2. List on 11.12.2023.


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

VSM

20.11.2023



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2. The aforementioned proceedings made in the four listings of captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] are telltale qua trajectory the matter has taken thus far. Today, Mr.R.Vinoth Bharathi, learned counsel for HCP petitioner who is before us, expresses regret for the trajectory and makes a request that admission may be considered and subject to admission, main matter may pleased be taken up alongside.

3. This Court notices that preventive detention order made by '2nd respondent' [hereinafter 'detaining authority' for the sake of convenience] which has been assailed in the captioned HCP is 'dated 20.03.2023 bearing reference No.23/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity]. In the light of the impugned preventive detention order being dated 20.03.2023 and considering certain difficulties expressed by learned counsel, as a one off case making it clear that this will not serve as a precedent in all such matters, we accede to the request of learned counsel.



4. In the support affidavit qua captioned HCP, several grounds have been raised but learned counsel predicated his campaign against 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 in the ground case is impaired. Learned counsel elaborating his submission in this direction drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order which reads as follows:

'...

In a case with major sections of law similar to the ground case, registered in Tirunelveli Town Police Station Cr.No.3/2023 under section 294(b), 448, 324, 427, 506(ii) IPC, accused Sundarrajan S/o. Esakkidass was granted bail by the Judicial Magistrate No.4 (FAC), Tirunelveli in Crl.M.P.No.549/2023 dated 10.01.2023.

Hence I infer that it is very likely of Thiru.Shanmugam alias Venkatesh's coming out on bail in the case in Tirunelveli Town Police Station Cr.No.60/2023 through the pending bail application since bail is granted by courts in such cases. ...'



5. It was submitted that Sundarrajan's case is in grounds booklet and we had the benefit of perusing Sundarrajan's case bail order [bail order dated 10.01.2023 in CrI.M.P.No.549 of 2023 on the file of Court of Judicial Magistrate No.4 (FAC), Tirunelveli].

6. Learned counsel submitted that ground case qua detenu as per the impugned preventive detention order *inter alia* is for alleged offences under Sections 324 and 387 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity], whereas Sundarrajan's case is with regard to Section 324 IPC alone.

7. It was submitted that Section 387 [Putting person in fear of death or of grievous hurt, in order to commit extortion] is a serious offence which entails punishment upto seven years in contradistinction to Section 324 [voluntarily causing hurt by dangerous weapon or means] which entails a maximum punishment of only three years. Therefore, bail granted in Sundarrajan's case qua 324 IPC offence cannot be the benchmark qua alleged 387 offence is learned counsel's say.



8. In response to aforementioned argument, learned Prosecutor submitted that both Sections 324 and 387 IPC are slotted under Chapter XVI of IPC [Chapter XVI – Of Offences Affecting The Human Body] and they are broadly comparable,.

9. This Court carefully considered the rival submissions. We find that Section 387 IPC entails a punishment which may extend upto seven years in contradistinction to Section 324 IPC which entails a maximum punishment of only three years. As rightly pointed out by learned counsel for HCP petitioner, in this view of the matter considering the facts and circumstances of the case on hand and other attendant circumstances, we are of the view that relying on Sundarrajan's case to record / arrive at subjective satisfaction as regards imminent possibility of detenu being enlarged on bail qua ground case is clearly a flawed exercise. This means that subjective satisfaction is impaired which in turn means that impugned preventive detention order is vitiated and the same has become vulnerable for being dislodged in the habeas legal drill on hand.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.03.2023 bearing reference No. 23/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Shanmugam alias Venkatesh, aged about 29 years, son of Thiru.Ganeshan, 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.)
11.12.2023

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. 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 Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.



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

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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