



HCP(MD)No.1261 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.1261 of 2023

Renuga

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George, Chennai-600 009.

2. The Commissioner of Police,
Madurai City.

3. The Superintendent of Police,
Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, by calling for the records in pursuant to the proceedings of the 2nd respondent in detention order in No.40/BCDFGISSSV/2023 dated 04.05.2023 and quash the same and consequently direct the respondents to produce the detenu namely, Sri Pugal Indra, S/o.Ganeshpandi, aged 42 years who is detained as Goondas Madurai Central Prison, now confining at Central Prison, Puzhalal, Chennai, before this Court and set him at liberty by producing him before this Court.



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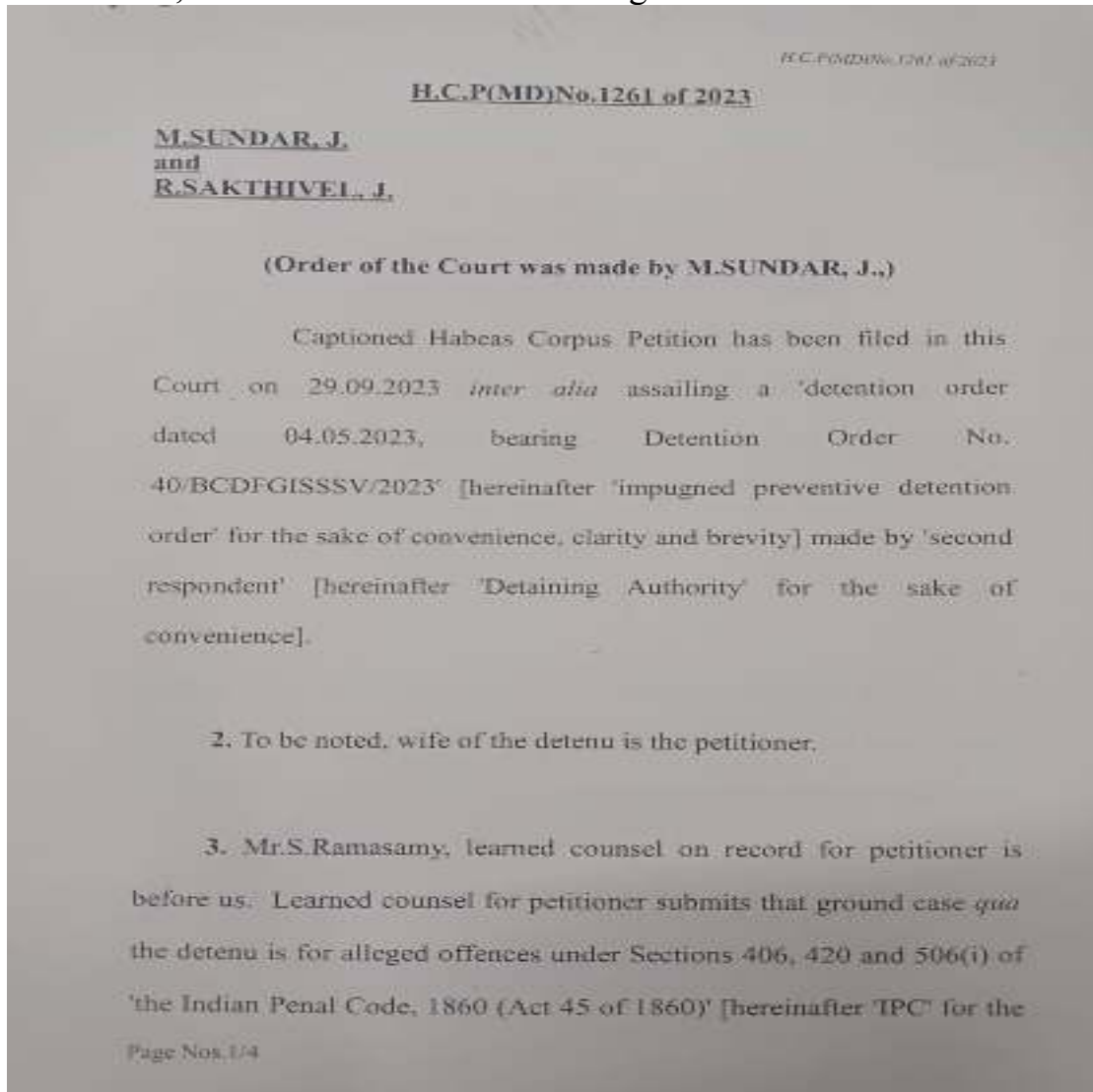
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For Petitioner : Mr.S.Ramasamy
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 18.10.2023, this Bench made the following order:





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for sake of brevity] in Crime No.210 of 2023 on the file of D3 Koodalpudur
(Crime) Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) 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 family members of the detenu were not informed about the order of detention.

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

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


[M.S.J.,]
18.10.2023


[R.S.V.J.,]

ps



2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. This also means that short forms, short references 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. Today, Mr.S.Ramasamy, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the ground that the family members of the detenu were not informed about the detention, but today, in the final hearing board, learned counsel changed his line of attack and predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the



detaining authority as regards the imminent possibility of the detenu being enlarged on bail is impaired. In support of this contention, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

' ...

I am also aware that bail was granted by the Principal Sessions Judge, Madurai in CrI.M.P.No.4909/2020 on 11.11.2020 to one accused Dinesh Kumar, s/o. Ramkumar in the case in D2 Sellur (Crime) PS Cr.No.2394/2020 u/s 406, 420,506(i) IPC, whioch is a case similar to that of the above said ground case, second adverse case, third adverse case and fourth adverse case.

Hence, I am satisfied that there is a real possibility of his (Sri Pugal Indira, s/o. Ganeshpandi) coming out on bail by filing further bail application before the court concerned in the ground case, second, third and fourth adverse cases, since in a case similar to that of the ground case, second adverse case, third adverse case and fourth adverse cases, bail has been granted by the court concerned to the accused. ...'

5. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel drew our attention to Dinesh Kumar's case bail order being bail order dated 11.11.2020 in CrI.M.P.No.4909/2020 on the file of Principal Sessions Judge, Madurai. This Bench had the benefit of perusing Dinesh Kumar's case bail order.



In Dinesh Kumar's case, there is nothing to demonstrate that there was any adverse case as against Dinesh Kumar whereas in the case on hand, even according to the impugned preventive detention order, there are as many as four adverse cases against detenu. This by itself makes the ground case and Dinesh Kumar's case not comparable is learned counsel's say.

6. In response to the aforementioned argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that alleged offences in Dinesh Kumar's case and the alleged offences in the case on hand are broadly comparable.

7. We carefully considered the rival submissions. This Court has repeatedly held that with regard to subjective satisfaction, it is not a mere comparison of alleged offences but the determinants and parameters which weighed in the mind of the bail court for granting the discretionary relief of bail has to be gone into. In this view of the matter, as there are as many as four adverse cases qua detenu in contradistinction to Dinesh Kumar's case where there is nothing to demonstrate that there was any adverse case, we have no difficulty in sustaining the argument of learned



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counsel for HCP petitioner that the two cases are not comparable. This reminds us of age old adages i.e., 'comparing Apples and Oranges' and 'comparing Cheese and Chalk'. This means that the subjective satisfaction is impaired which in turn means that the impugned preventive detention order has got vitiated and become vulnerable for being dislodged in the habeas legal drill on hand. In this view of the matter, we interfere qua the impugned preventive detention order.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.05.2023 bearing reference No. 40/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Sri Pugal Indira, aged 42 years, son of Thiru.Ganeshpandi, 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, Madurai and Central Prison, Puzhalal, Chennai.



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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 Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Commissioner of Police,
Madurai City.

3. The Superintendent of Police,
Central Prison,
Madurai.

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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ORDER MADE IN
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DATED : 11.12.2023