



H.C.P(MD)No.1252 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

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

H.C.P(MD)No.1252 of 2023

Sathiskumar

... Petitioner

vs.

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

2. The Commissioner of Police,
O/o Commissioner of Police,
Tiruchirappalli City.

3. The Inspector of Police,
Railway Police Station,
Trichy City.(Crime No.136/2023)

4. The Superintendent of Prison,
Central Prison, Tiruchirappalli City.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, call for the records relating to the detention order in C.No.71/Detention/C.P.O/T.C/2023 dated 14.07.2023 and quash the same and consequently direct the respondents to produce the body or person of the detenu namely Sathishkumar son of Ganesan aged about 24 years now detained as "GOONDA" at Central Prison, Trichy and set him at liberty forthwith.



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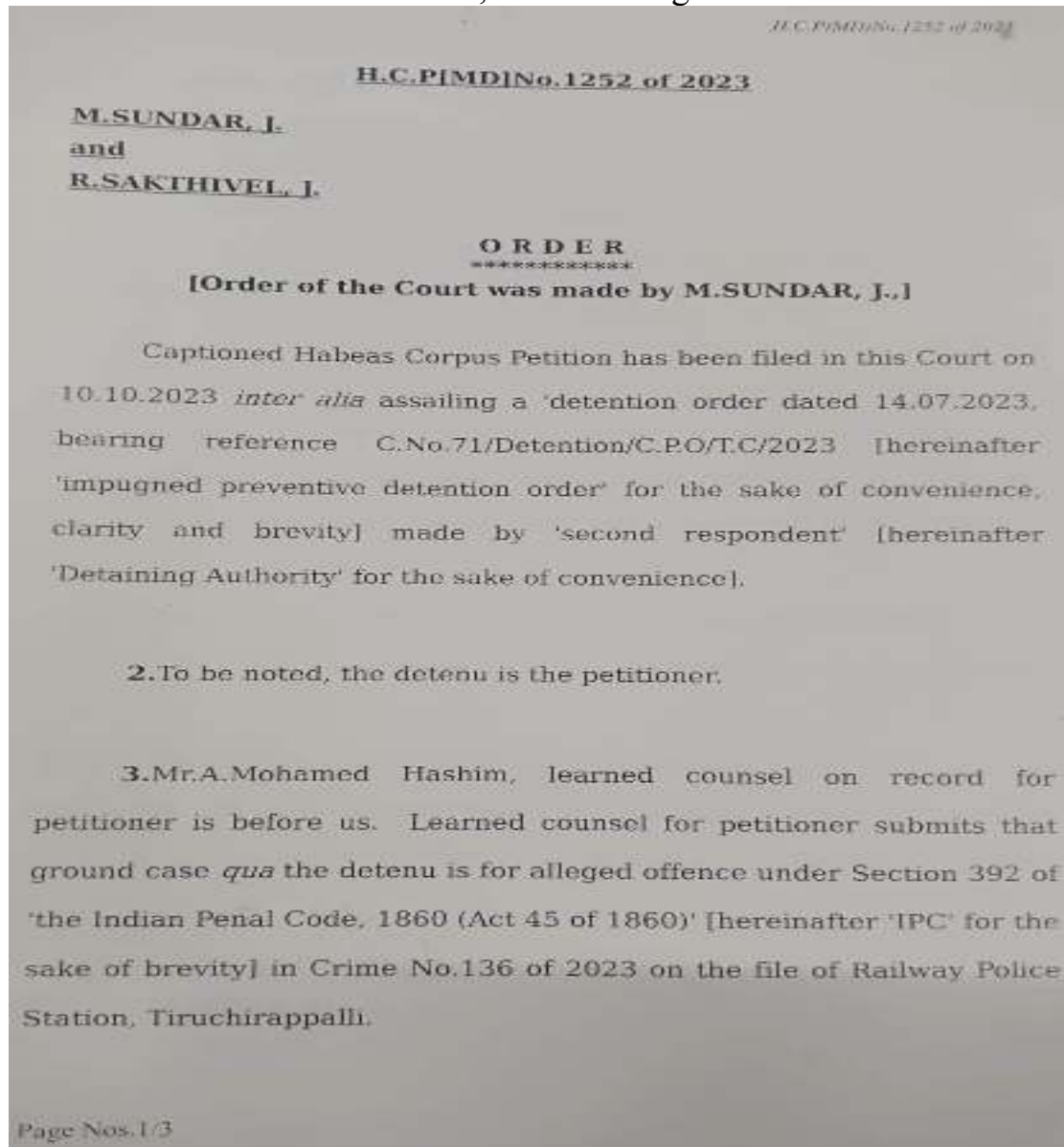
For Petitioner : Mr.A.Mohamed Hashim
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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ORDER

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

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 16.10.2023, the following order was made:





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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 a similar case bail order furnished in the grounds booklet furnished to the detenu is not similar in nature.

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

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.] & [R.S.V.]

16.10.2023

MR

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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. There are four adverse cases and one ground case. The impugned preventive detention order has been passed based on a ground case in Crime No.136 of 2023 on the file of Trichy Railway Police Station, for the alleged offence under Section 392 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.



4. Today, Mr.A.Mohamed Hashim, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

5. Learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of documents (relied on by the detaining authority) in the lone language which the detenu is conversant with. Elaborating on this submission, learned counsel drew our attention to page Nos.150 and 151 of the grounds booklet served on the detenu which is a Government Order bearing reference G.O.(D)No.89 [Home, Prohibition and Excise (XVI) Department] dated 12.04.2023. Tamil translation of the Government Order has not been furnished to the detenu is learned HCP petitioner counsel's say.

6. We had the benefit of perusing the aforementioned grounds booklet. We also noticed that the said G.O.(D)No.89 forms part of the ground on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.



7. Be that as it may, we are informed that the literacy level of the detenu is X Standard and discontinued Diploma. We are also informed that the detenu is conversant only with Tamil. We remind ourselves of **Powanammal** principle i.e., ratio in **Powanammal Vs. State of Tamil Nadu {(1999) 2 SCC 413}**, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which Hon'ble Supreme Court answered this question is captured in paragraph 16. Paragraphs 6 and 16 {as in SCC journal} read as follows:

'6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed.'



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8. We find that the aforementioned **Powanammal** case applies in all force to the case on hand as we find that the Government Order which has been relied on as part of the grounds of detention *qua* impugned preventive detention order is a crucial document and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation against the impugned preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in clause (5) of Article 22 of the Constitution of India. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in this habeas drill on hand.

9. 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.

10. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 14.07.2023 bearing reference C.No. 71/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Sathishkumar Male, aged 24 years, son of



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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.)
15.11.2023

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, Tiruchirappalli. 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 Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
O/o Commissioner of Police,
Tiruchirappalli City.

3. The Inspector of Police,
Railway Police Station,
Trichy City,
(Crime No.136/2023)



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4. The Superintendent of Prison,
Central Prison,
Tiruchirappalli City.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6. 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 : 15.11.2023