



**HCP(MD)No.1249 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.1249 of 2023**

Annakodi

: Petitioner/Detenu

**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 Magistrate and District Collector,  
Theni District,  
Theni.

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

: 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 passed in Detention Order No.42/2023 dated 21.06.2023 on the file of the 2<sup>nd</sup> respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Annakodi, aged about 48 years, S/o.Karuthakannan, now detained at the Central Prison, Madurai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 16.10.2023, the following order was made:

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**M.SUNDAR, J.**

**and**

**R.SAKTHIVEL, J.**

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



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*'Captioned Habeas Corpus Petition has been filed in this Court on 11.10.2023 inter alia assailing a 'detention order dated 21.06.2023, bearing reference Detention Order No. 42/2023 [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].*

*2.To be noted, the detenu is the petitioner.*

*3.Mr.N.Pragalathan, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 377 and 506(i) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and Sections 5(k) and 6 of 'the Prevention of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of brevity] in Crime No.102 of 2023 on the file of Gudalur South Police Station.*

*4.The aforementioned impugned preventive detention order has been made on the premise that the detenu 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 remand order has not been furnished to the petitioner despite it was sought by the petitioner by way of representation.*

*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.J.]***

***16.10.2023***

**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. A case was registered against the petitioner/detenu under Sections 377 of IPC and 5(k), 6 of POSCO Act and 506(i) of IPC in Crime No. 102/2023 on the file of Gudalur South Police Station. Based on the said case, the impugned preventive detention order has been passed against the petitioner/detenu. As stated *supra*, at the time of admission of this HCP, the petitioner/detenu has raised a point that remand order has not been furnished to the petitioner/detenu. But, today, in the final hearing board, learned counsel for the petitioner raised a point that the petitioner/detenu was arrested on 09.06.2023 and remanded to judicial custody and his remand period was extended upto 27.06.2023. He further submitted that the detaining authority has referred to and relied on the remand order in the ground of detention. However, the copy of the said order has not been furnished to the petitioner/detenu even though he has made a representation dated 06.10.2023 *inter alia* requesting the copy of the said order. He further



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submitted that since the detaining authority did not furnish the copy of the remand order, the rights of the petitioner/detenu to make an effective representation has been affected. Learned counsel drew our attention to a portion of paragraph 5 of the grounds of the impugned preventive detention order which reads as follows:

*“ 5. I am aware that the accused Thiru.Annakodi was remanded at Sub Jail, Uthamapalayam in connection with Gudalur South Police Station in Crime No.102/2023 for judicial custody. His remand period was extended upto 27.06.2023. ...”*

4. 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 arrested on 09.06.2023 and remanded to judicial custody and lodged in Sub Jail, Uthamapalayam and his remand period was extended upto 27.06.2023. Though the detaining authority has relied on these remand aspects, copy of the remand order has not been furnished to the petitioner/detenu. The petitioner/detenu has made a representation dated 06.10.2023 to the first respondent through the third respondent requesting *inter alia* the copy of the remand order. Despite the



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request, 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 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.

5. In response to the aforesaid argument of the learned counsel for the petitioner/detenu, learned Additional Public Prosecutor submitted that 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.

6. This Court has considered the rival submissions.

7. The detaining authority has specifically stated that the petitioner/detenu was arrested on 09.06.2023 and remanded to judicial



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custody and lodged in Sub Jail, Uthamapalayam and his remand period was extended upto 27.06.2023. But, the copy of the remand order has not been furnished to the petitioner/detenu. This means that original remand order remanding the petitioner/detenu 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.

**8. 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 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.

9. In the result, this Habeas Corpus Petition is allowed and the impugned preventive detention order dated 21.06.2023 bearing reference Detention Order No.42/2023 made by the second respondent is set aside and the petitioner/detenu Thiru.Annakodi, male, aged 48 years, son of Thiru.Karuthakannan, 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.]**  
**27.11.2023**

Index : Yes /No  
Neutral Citation : Yes /No

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**Post Script:**

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

***(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,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai – 600 009.
2. The District Magistrate and District Collector,  
Theni District,  
Theni.
3. The Superintendent of Prison,  
Central Prison,  
Madurai.
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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**and**  
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