



WEB COPY

HCP(MD)No.1271 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2023

CORAM :

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

HCP(MD)No.1271 of 2023

S.Subashini

... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Government of Tamil Nadu, Home, Prohibition
and Excise Department, Chennai-9.

2. The Commissioner of Police,
Madurai City,
Madurai.

3. The Superintendent,
Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the records pertaining to the proceedings of 2nd respondent made in his proceedings in No. 62/BCDFGISSSV/2023 dated 20/7/2023 and quash the same and set petitioner's brother by name "Subash, S/o.Sakthivel, aged about 23 years" at liberty from Superintendent, Central Prison, Madurai.

For Petitioner : Mr.C.Karthikeya

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor



WEB COPY

HCP(MD)No.1271 of 20.



ORDER

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

Captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity and convenience) was listed in the Admission Board before this Bench on 18.10.2023, and the following order was made:

H.C.P(MD)No.1271 of 2023

H.C.P(MD)No.1271 of 2023

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

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

Captioned Habeas Corpus Petition has been filed in this Court on 12.10.2023 *inter alia* assailing a 'detention order dated 20.07.2023, bearing No.62/BCDEFGISSSV/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, sister of the detenu is the petitioner.

3. Mr.C.Prithviraj, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu is for alleged offences under Sections 395 read with 397 and 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.419 of 2023 on the file of E3 Anna Nagar Police Station.

Page Nos.1/4



WEB COPY

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].

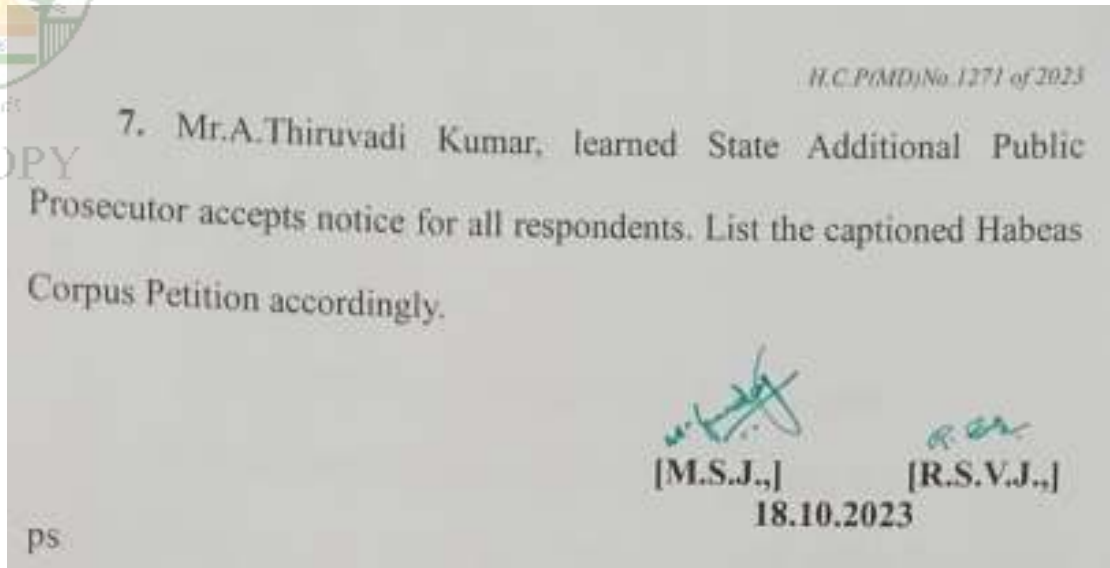
5. The impugned preventive detention order has been assailed *inter alia* on the ground that the Tamil translation of some of the documents have not been furnished.

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



HCP(MD)No.1271 of 20.

WEB COPY



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. As would be evident from the Admission Board order, at the time of admission, learned counsel for HCP petitioner posited his challenge to the impugned preventive detention order on the ground that Tamil translation of some of the documents have not been furnished [To be noted,



this is captured in paragraph 5 of the Admission Board order]. However, 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 imminent possibility of the detenu being enlarged on bail, is impaired. Elaborating on 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 District Judge, Madurai in CrI.MP.No.2944/2020 on 17.6.2020 to one accused Suresh concerned in the case in B3 Teppakulam PS Cr.No.636/2020 u/s 395, 397, 506 (ii) IPC. which is a case similar to that of the said ground case and adverse case.

Hence, I am satisfied that there is a real possibility of his (Subash, s/o. Sakthivel) coming out on bail through the pending bail applications before the court concerned in the ground case and adverse case, since in a case similar to that of the ground case and adverse case, bail has been granted by the court concerned to the accused. ...'

4. Adverting to the aforementioned portion, learned counsel submitted that Suresh's case bail order in the booklet shows that the Public Prosecutor did not raise any serious objection for granting bail to the bail petitioner. This Court had the benefit of perusing the Suresh's case bail order



and finds that the submission is correct as the point that the Public Prosecutor did not raise any objection in granting bail has been captured by the learned Sessions Judge in paragraph 4 of Suresh's case bail order.

5. In response to the aforementioned argument, learned Prosecutor submitted that the offences in Suresh's case and the case on hand i.e., ground case are broadly comparable.

6. This Court has repeatedly held that when it comes to subjective satisfaction of the detaining authority as regards imminent possibility of the detenu being enlarged on bail, it is not a comparison of offences and charges alone, but the determinants and parameters which weighed in the mind of the bail court for grant of discretionary relief of bail, also has to be considered. In the case on hand, it is clear that one of the main determinants that has weighed in the mind of the bail court i.e., learned Sessions Court for grant of discretionary relief of bail is that the Public Prosecutor has not raised any serious objection for grant of bail to Suresh. Therefore, comparison of Suresh's case bail order with the ground case in the case on hand for recording subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail reminds us of age old adages 'comparing Apples and Oranges' and 'comparing Cheese and Chalk'. Therefore, we have no difficulty in sustaining the argument of the learned counsel for HCP



petitioner and holding that the impugned preventive detention order deserves to be dislodged in the habeas legal drill on hand.

WEB COPY

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.07.2023 bearing reference Detention Order No.62/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Subash, aged about 23 years, son of Thiru.Sakthivel, 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.)
06.12.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Dindigul and Central Prison, Madurai. 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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-9.



HCP(MD)No.1271 of 20.

2. The Commissioner of Police,
Madurai City,
Madurai.

3. The Superintendent,
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.



WEB COPY



HCP(MD)No.1271 of 20.

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

bala

ORDER MADE IN
HCP(MD)No.1271 of 2023
DATED : 06.12.2023