



HCP(MD)No.1284 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2023

CORAM :

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

HCP(MD)No.1284 of 2023

Nagar @ Nagamuthu

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Sivagangai District, Sivagangai.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 Cr.M.P.No. 18/Goonda/2023 dated 22.09.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Nagar @ Nagamuthu, son of Arasu, aged about 38 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.



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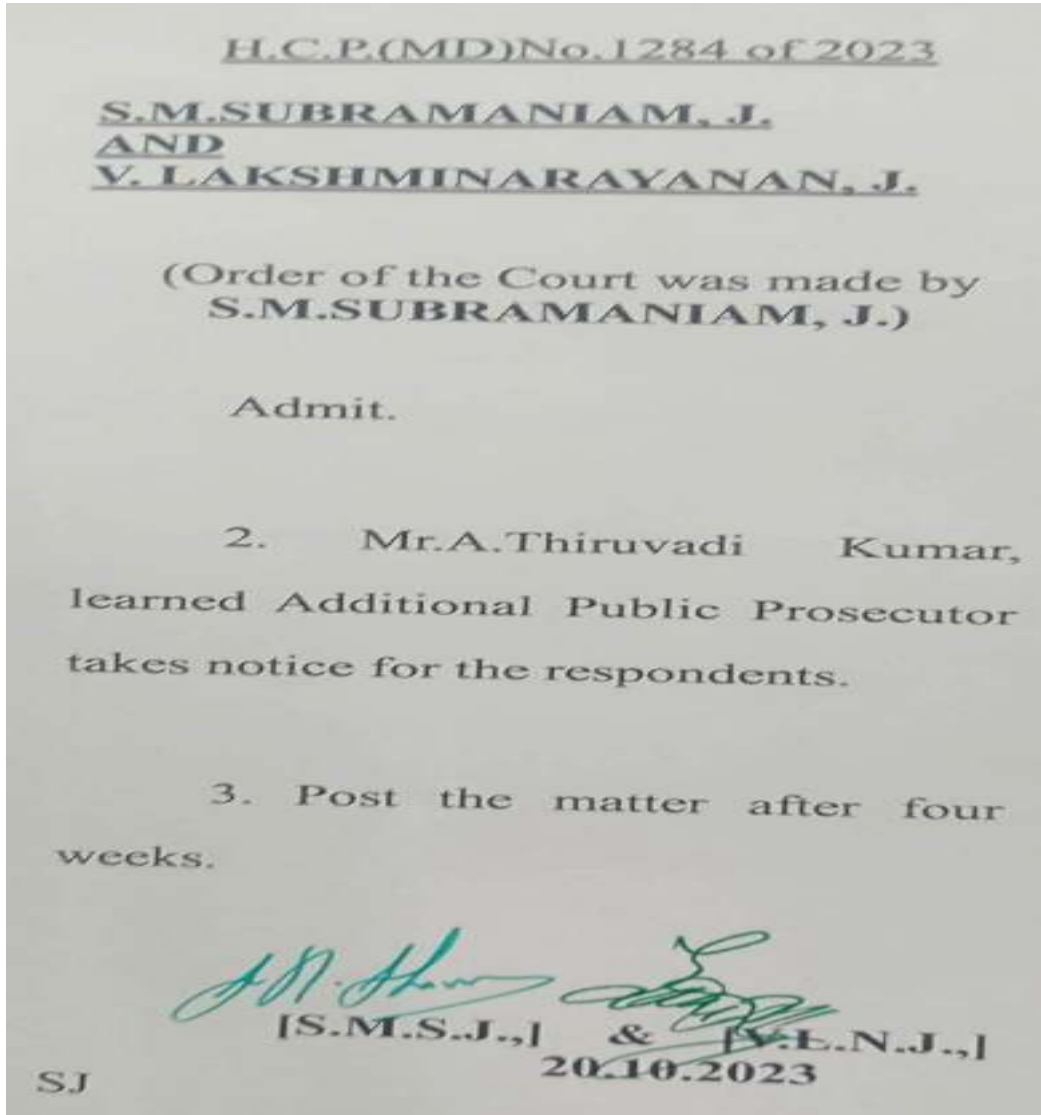
HCP(MD)No.1284 of 2023

For Petitioner : Mr.S.Ramesh Kumar
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 20.10.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:





2. In the Final Hearing Board today, it has now become necessary to give factual matrix in a nutshell containing essentials that are imperative for appreciating this final order.

3. Mr.S.Ramesh Kumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4. Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the detenu assailing the 'preventive detention order dated 22.09.2023 bearing reference Cr.M.P.No.18/Goonda/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Manamadurai Police Station, is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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5. Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

6. In the support affidavit qua captioned HCP, several points have been raised but in the final hearing board, learned counsel predicated his campaign against the impugned preventive detention order on two points and these two points are as follows:

(i) The remand order in the ground case has been relied on by the detaining authority in the grounds of impugned preventive detention order but the same has not been furnished to the detenu;

(ii) The detaining authority has also relied on extension of remand on two occasions, the remand extension orders are in English but Tamil translation of the same has not been furnished to the detenu though the



same was specifically sought for. Learned counsel pointed out that the literacy level of the detenu is VI Standard in school.

7. Elaborating on the aforesaid two points, learned counsel drew our attention to a portion of the grounds of impugned preventive detention order which reads as follows:

'... On the complaint of the complainant, a case was registered in Manamadurai P.S.Cr.No.319/2023, u/s. 25(1-A) Arms Act. The accused Nagar @ Nagamuthu was arrested on 07.08.2023 at 13.30 hrs near Kilankatoor diversion and his confession statement was recorded. The accused was produced in the Judicial Magistrate Court, Manamadurai on 07.08.2023 and remanded to judicial custody upto 21.08.2023 and lodged in the District Jail, Ramanathapuram. His remand was extended upto 28.08.2023, 11.09.2023 and further extended upto 25.09.2023.'

8. Learned counsel submitted that the detaining authority has specifically relied on the remand order and has stated that the detenu was arrested on 07.08.2023, he was produced in the Court of Judicial Magistrate, Manamadurai, on the same day and the Judicial Magistrate remanded him to judicial custody upto 21.08.2023 but this remand order



dated 07.08.2023 has not been furnished to the detenu. This Court had the benefit of perusing the grounds booklet and there is no reason to disagree with the learned counsel for petitioner. This point turns heavily on the records and therefore, learned Prosecutor really does not have much of a say.

9. As regards the second point, from the extracted portion supra, it will be clear that the detaining authority has relied on remand extension orders to mention that remand was extended upto 28.08.2023, 11.09.2023 and further upto 25.09.2023. Taking us through the grounds booklet, learned counsel pointed out that these remand extension orders are in English, the same form part of the grounds booklet but Tamil translation has not been furnished to the detenu. Perusal of the grounds booklet makes it clear that the submissions of learned counsel are factually correct. This point also turns heavily on records and therefore, learned Prosecutor really does not have much of a say.

10. We have already noticed that literacy level of the detenu is VI Standard in school. We are also informed that the detenu is conversant only with Tamil. This Bench reminds itself 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.'

11. In the light of ***Powanammal*** principle, the second point urged by learned counsel for petitioner also cannot but be sustained.



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This means that the impugned preventive detention order becomes liable for being dislodged in a habeas legal drill on hand. Therefore, we interfere with the impugned preventive detention order and we are setting aside the same.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.09.2023 bearing reference Cr.M.P.No.18/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Nagar @ Nagamuthu, aged about 38 years, son of Thiru.Arasu, 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.)
20.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Ramanathapuram 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.



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To

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2. The District Collector and District Magistrate,
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Sivagangai District, Sivagangai.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai 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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ORDER MADE IN
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