



H.C.P.(MD) No.1320 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2023

CORAM

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

H.C.P. (MD) No.1320 of 2023

M.Mariammal

.. Petitioner

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 Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in H.S.(M) Confdl. No.72/2023 dated 29.05.2023 and quash the same and direct the respondents to produce the body or person of the petitioner's son namely Sudalaikumar, son of Mahendran aged about 19 years who is



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detained at Central Prison, Palayamkottai, before this Honble Court and set him at liberty.

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For Petitioner : Mr.N.Pragalathan
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 before us on 02.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:

M.SUNDAR, J.
and
R.SAKTHIVELU, J.

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ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 30.10.2023 *inter alia* assailing a 'detention order dated 29.05.2023, bearing H.S(M)Confil No.72 of 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, mother of 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 Crime No.182 of 2023 on the file of Thalamthunagar Police Station registered under Sections 294(b), 342, 307 and 506(ii) of the Indian Penal Code, 1860.

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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 copy of the remand order dated 05.05.2023 has not been furnished to the detenu which impairs the rights of the detenu qua making an effective representation against the impugned preventive detention order.

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 Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S., J.] & [R.S.V., J.]
02.11.2023

YSM

2. The aforementioned 02.11.2023 order captures all essentials, i.e., all facts that are imperative for appreciating this final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the order dated 02.11.2023 in this order also for the sake of convenience and clarity.



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

4. There is no adverse case and one ground case. The ground case which constitutes sole substratum of the impugned preventive detention order is is Crime No.182 of 2023 on the file of Thalamuthunagar Police Station for alleged offences under Sections 294(b), 342, 307 and 506(ii) of IPC. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

5. In the final hearing today, learned counsel predicated his campaign against impugned preventive detention order on the point that the initial remand order qua 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 causing infraction of constitutional right ingrained in Article 22(5) of the Constitution of India.



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6. Elaborating on the aforementioned point, learned counsel drew our attention to a portion of paragraph No.3 of the grounds of impugned preventive detention order which reads as follows:

'.....3. He was produced before the Court of Judicial Magistrate No.II., Thoothukudi on 05.05.2023 and forwarded to judicial custody up to 19.05.2023 and lodged in Thoothukudi District jail at Perurani. Further his remand was extended up to 02.06.2023. The case is under investigation.'

Learned counsel submitted that the detaining authority has relied on the initial remand on 05.05.2023 but the same has not been furnished to the detenu as part of the grounds booklet.

7. In response to the aforementioned argument, learned Prosecutor submitted that the order extending the remand after the initial order of remand has been furnished to the detenu.



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8. We carefully considered the rival submissions. In considering the rival submissions, we find that a similar/same point was dealt with by us in ***R.Selvi Vs. The Additional Chief Secretary to Government and others*** reported in **2023/MHC/4778** (Neutral Citation of this Court i.e., Madras High Court).

9. A scanned reproduction of ***Selvi's*** case as reported in **2023/MHC/4778** is as follows:

2023/MHC/4778

BEFORE THE MADRAS BENCH OF MADRAS HIGH COURT

DATE: 15.10.2023

Coram

THE HONBLE MR. JUSTICE MSUNDAR
and
THE HONBLE MR. JUSTICE R.SAKTHIVEL

H.C.P.(MD) No.1109 of 2023

R.Selvi

— Petitioner

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 Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tamil Nadu.

— Respondent

Prayer: 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 passed in H.S.(M) Confel No.75/2023 dated 14.06.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu.



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2. Impugned preventive 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, Storm-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 detainee is a 'Goonda' within the meaning of Section 2(c) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of 'substantum of the impugned preventive detention order is Crime No.114 of 2023 on the file of Maruthapuram Police Station for the alleged offenders under Sections 294(b), 307 and 508(ii) 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 preventive detention order, it is not necessary to delve into the factual matrix of the case.

4. Mr.N.Pagalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



5. Captioned HCP was listed in the Admissions Board before another Coordinate Hon'ble Division Bench on 01.09.2023 and an order was made in the Admissions Board and a scanned reproduction of the same is as follows:



6. Though very many points have been raised in the support affidavit (an captioned HCP, learned counsel for HCP petitioner drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention



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order, which reads as follows:

3..... The offence committed by the accused Ramiah @ JGB Ramiah under Sections 294(b), 307 and 506(ii) IPC relating to abuse with filthy language in a public place, attempt to murder and criminal intimidation were punishable under Chapters XIV, XVI and XXII of the Indian Penal Code. He was produced before the Court of Judicial Magistrate No.11, Thoothukudi on 19.05.2023 and forwarded to judicial custody upon 03.06.2023 and lodged in Thoothukudi District Jail at Peravur. Further his remand was extended up to 22.06.2023. The case is under investigation. "

7. Adverting to the aforementioned portion, learned counsel for HCP petitioner submitted that the Detaining Authority has recorded the fact that the detenu was produced before Judicial Magistrate H, Thoothukudi. Though the Detaining Authority has relied on this remand aspect of the matter qua ground case in the impugned preventive detention order, the copy of the remand order has not been furnished to detenu. Learned counsel also submits that the detenu has sent a representation dated 25.08.2023 specifically requesting for the remand order but the same has not been furnished.



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8. In response to the aforementioned argument of learned counsel for HCP petitioner, learned State Additional Public Prosecutor submitted to the contrary. Learned Additional Public Prosecutor submitted that the remand order has been furnished. This means that reference of the learned Additional Public Prosecutor is to the order of extension up to 22.06.2023. This means that the original remand order remanding the detenu up to 03.06.2023 has not been furnished to the detenu. 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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.06.2023 bearing H.S.(M)Confdl No.75



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of 2023 made by the second respondent is set aside and the detenu

With C Thiru,Ramesh @ 2GB Ramesh, aged 28 years, son of 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.)
18.10.2023

Index : Yes
Neutral Citation : Yes
vsn

P.S: Registry to forthwith communicate this order to Jail authorities in
Central Prison, Palayamkottai.

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Paragraphs 6 to 8 in *Selvi's* case constitute the crux and gravamen of the issue in the legal drill on hand.

10. In the light of *Selvi's* case principle, we have no hesitation in sustaining the submission of learned counsel for HCP petitioner that the sanctus constitutional right of the detenu which has been ingrained in Article 22(5) by way of a Constitutional safeguard has been breached.



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.05.2023 bearing reference H.S.(M) Confdl. No.72/2023 made by the second respondent is set aside and the detenu Thiru.Sudalaikumar, male, aged 19 years, son of Thiru.Mahendran 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

Neutral Citation : Yes

PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. 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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1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
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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