



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM :

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

H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

HCP(MD)No.1357 of 2023

Mariyammal

... Petitioner

vs.

1. 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 District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in H.S(M) Confdl.No.91 of 2023 dated 27.07.2023 in detaining the detenu under Section 2(ggg) of the Tamilnadu Act 14 of 1982 as a Sexual Offender and quash the same and



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direct the respondents to produce the detenu namely Pandiselvam S/o.Andavar, Male, aged about 22 years, who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Karunakaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

HCP(MD)No.1361 of 2023

Murugeswari

... Petitioner

vs.

1. 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 District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in H.S(M) Confdl.No.90 of 2023 dated 27.07.2023 in detaining the detenu under Section 2(ggg) of the Tamilnadu Act 14 of 1982 as a Sexual Offender and quash the same and direct the respondents to produce the detenu namely Marimuthu @



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Emilikuttan, S/o.Paramasivan, Male, aged about 30 years, who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Karunakaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

HCP(MD)No.1363 of 2023

Nagalakshmi

... Petitioner

vs.

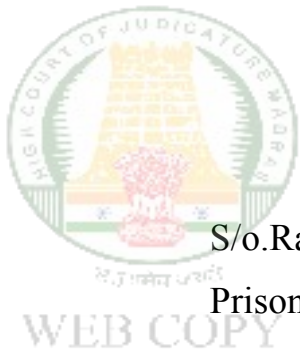
1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in H.S(M) Confdl.No.93 of 2023 dated 27.07.2023 in detaining the detenu under Section 2(ggg) of the Tamilnadu Act 14 of 1982 as a Sexual Offender and quash the same and direct the respondents to produce the detenu namely Kaliraj,



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S/o.Ramanathan, Male, aged about 26 years, who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Karunakaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

HCP(MD)No.1464 of 2023

P.Sasikala

... 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 entire records connected with the detention order passed in H.S(M) Confdl.No.92/2023 dated 27.07.2023 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 namely, the petitioner's husband i.e., Palraj @ Viji, aged about 35 years, S/o. Lakshmanan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.M.Karunakaran for Mr.N.Pragalathan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

COMMON ORDER

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

This common order will now govern the captioned four 'Habeas Corpus Petitions' [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of brevity, convenience and clarity].

2. H.C.P(MD)Nos.1357, 1361 and 1363 of 2023 were listed in the Admission Board before this Bench on 08.11.2023 and the following orders were made:

H.C.P(MD)No.1357 of 2023

HCP(MD)No.1357 of 2023

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 03.11.2023 *inter alia* assailing a 'detention order dated 27.07.2023, bearing reference H.S(M)Confdl.No. 91/2023' [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]. The petitioner is the mother of the detenu.

2. Mr.K.M.Karunakaran, learned counsel on record for petitioner is before us. He submits that ground case *qua* the detenu is for alleged offence under Sections 3(a), 4, 5(l), 5(n), 6, 7, 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for brevity] and Sections 363, 452, 506(i) of the 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] vide Crime No.05 of 2023 on the file of Kovilpatti All Women Police Station.



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

3. 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].

4. The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 01.07.2023 but the impugned preventive detention order has been made only on 27.07.2023.

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

H.C.P(MD)No.1357 of 2023

6. 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.]
08.11.2023

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H.C.P(MD)No.1361 of 2023

HCP(MD)No.1361 of 2023

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 03.11.2023 *inter alla* assailing a 'detention order dated 27.07.2023, bearing reference H.S(M)Confdl.No. 90/2023' [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]. The petitioner is the sister of the detenu.

2. Mr.K.M.Karunakaran, learned counsel on record for petitioner is before us. He submits that ground case *qua* the detenu is for alleged offence under Sections 3(a), 4, 5(l), 5(n), 6, 7, 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for brevity) and Sections 363, 452, 506(i) of the 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] vide Crime No.05 of 2023 on the file of Kovilpatti All Women Police Station.



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H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

H.C.P(MD)No.1361 of 2023

3. 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, Slam-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].

4. The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 02.07.2023 but the impugned preventive detention order has been made only on 27.07.2023.

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

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6. 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.]
08.11.2023

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H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

H.C.P(MD)No.1363 of 2023

HCP(MD)No.1363 of 2023

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 03.11.2023 *inter alia* assailing a 'detention order dated 27.07.2023, bearing reference H.S(M)Confdl.No. 93/2023' [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]. The petitioner is the wife of the detenu.

2. Mr.K.M.Karunakaran, learned counsel on record for petitioner is before us. He submits that ground case *qua* the detenu is for alleged offence under Sections 3(a), 4, 5(i), 5(n), 6, 7, 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for brevity] and Sections 363, 452, 506(i) of the 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] vide Crime No.05 of 2023 on the file of Kovilpatti All Women Police Station.



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

3. 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].

4. The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detenu was arrested on 01.07.2023 but the impugned preventive detention order has been made only on 27.07.2023.

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

H.C.P(MD)No.1363 of 2023

6. 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.]
08.11.2023

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H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

3. HCP(MD)No.1464 of 2023 was listed in the Admission

Board before another Hon'ble Coordinate Division Bench on 23.11.2023

and the following Admission Board order was made:

H.C.P.(MD)No.1464 of 2023

S.M.SUBRAMANIAM, J.

AND

V. LAKSHMINARAYANAN, J.

ORDER

[Order of the Court was made by

S.M.SUBRAMANIAM, J.]

Admit.

2.Mr.A.Thiruvadi Kumar, learned
Additional Public Prosecutor takes notice
for the respondents and seeks time to file
counter.

3.Post the matter after four weeks.



[S.M.S., J.] & [V.L.N., J.]

23.11.2023



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

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4. The detenus in the captioned four HCPs are co-accused in the same ground case and therefore, factual matrix captured by this Bench in the Admission Board orders in H.C.P(MD)Nos.1357, 1361 and 1363 of 2023 will suffice for appreciating this common final order. Likewise, the point raised is also common.

5. Assailing the impugned preventive detention orders, though very many points have been raised in the support affidavit, Mr.M.Karunakaran, learned counsel on record for petitioners in H.C.P(MD)Nos.1357, 1361 and 1363 of 2023 and the same counsel representing the counsel on record for HCP petitioner in HCP(MD)No. 1464 of 2023 predicated his campaign against the impugned preventive detention orders on one point and that one point is remand extension orders which have been relied on by the detaining authority in the impugned preventive detention orders have not been furnished in Tamil. Learned counsel points out that literacy level of the detenus is not very high.



6. There is no dispute that detaining authority has relied on the factual position that detenus were arrested, remanded to judicial custody and that the remand was subsequently extended. This has been set out in paragraph 3 of impugned preventive detention orders.

7. We had the benefit of perusing the grounds booklet served on the detenus. A careful perusal of the grounds booklet bring to light that Tamil translation of remand extension orders have not been furnished to detenus. Therefore, *Powanammal* principle applies. 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 detenu, 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.

8. To be noted, aforementioned paragraphs will bring to light the question which Hon'ble Supreme Court addressed itself to and the manner in which the questions were answered by Hon'ble Supreme Court.

9. The aforementioned point canvassed by learned counsel for HCP petitioners in his campaign against impugned preventive detention orders turns heavily on records before us and therefore, learned Prosecutor really does not have much of a say.

10. In the light of the narrative thus far, we have no hesitation in saying that rights of detenus to make an effective representations which is a constitutional safeguard ingrained in clause (5) of Article 22 of the Constitution of India are imparied *inter alia* in the light of **Powanammal** principle. This means that four impugned preventive detention orders



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have been vitiated and become liable for being dislodged in the habeas legal drill on hand.

11. We shall be doing so vide operative paragraphs of this common order infra but before we do that we deem it appropriate to record the obtaining position that as regards the ground case, the same is now Special S.C.No.91 of 2023 on the file of POCSO Court, Thoothukudi, and charge sheet / final report has been filed after completion of investigation. We make it clear that the trial Court shall proceed with trial in the ground case as against the detenus who are accused therein on its own merits and in accordance with law untrammelled by this common order dislodging the impugned preventive detention orders. To put it differently, instant common order which has been made in a habeas legal drill for testing the impugned preventive detention orders will not serve either as a impetus or become an impediment for the trial Court.

12. Ergo, the sequitur is, captioned HCP(MD)No.1357 of 2023 is allowed. Impugned preventive detention order dated 27.07.2023 bearing reference H.S(M) Confdl.No.91 of 2023 made by the second



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

respondent is set aside and the detenu Thiru.Pandiselvam, aged 22 years, son of Thiru.Andavar, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

13. Ergo, the sequitur is, captioned HCP(MD)No.1361 of 2023 is allowed. Impugned preventive detention order dated 27.07.2023 bearing reference H.S(M) Confdl.No.90 of 2023 made by the second respondent is set aside and the detenu Thiru.Marimuthu @ Emilikuttan, aged 30 years, son of Thiru.Paramasivan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

14. Ergo, the sequitur is, captioned HCP(MD)No.1363 of 2023 is allowed. Impugned preventive detention order dated 27.07.2023 bearing reference H.S(M) Confdl.No.93 of 2023 made by the second respondent is set aside and the detenu Thiru.Kaliraj, aged 26 years, son of Thiru.Ramanathan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

15. Ergo, the sequitur is, captioned HCP(MD)No.1464 of 2023 is allowed. Impugned preventive detention order dated 27.07.2023



H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

bearing reference H.S(M) Confdl.No.92 of 2023 made by the second respondent is set aside and the detenu Thiru.Palraj @ Viji, aged 35 years, son of Thiru.Lakshmanan, 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.)
14.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1. 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 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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H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023

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

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COMMON ORDER MADE IN
H.C.P(MD)Nos.1357, 1361, 1363 and 1464 of 2023
DATED :14.12.2023