



H.C.P(MD)No.1371 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.1371 of 2023

Shahul Hameed

... Petitioner

vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.

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

... 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 C.No. 14/Detention/C.P.O/T.C/2023 dated 20.03.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Amrudeen alias Kozhi, son of Babu, aged about 22 years, now detained as "DRUG OFFENDER" at Tiruchirappalli Central Prison before this Court and set him at liberty forthwith.



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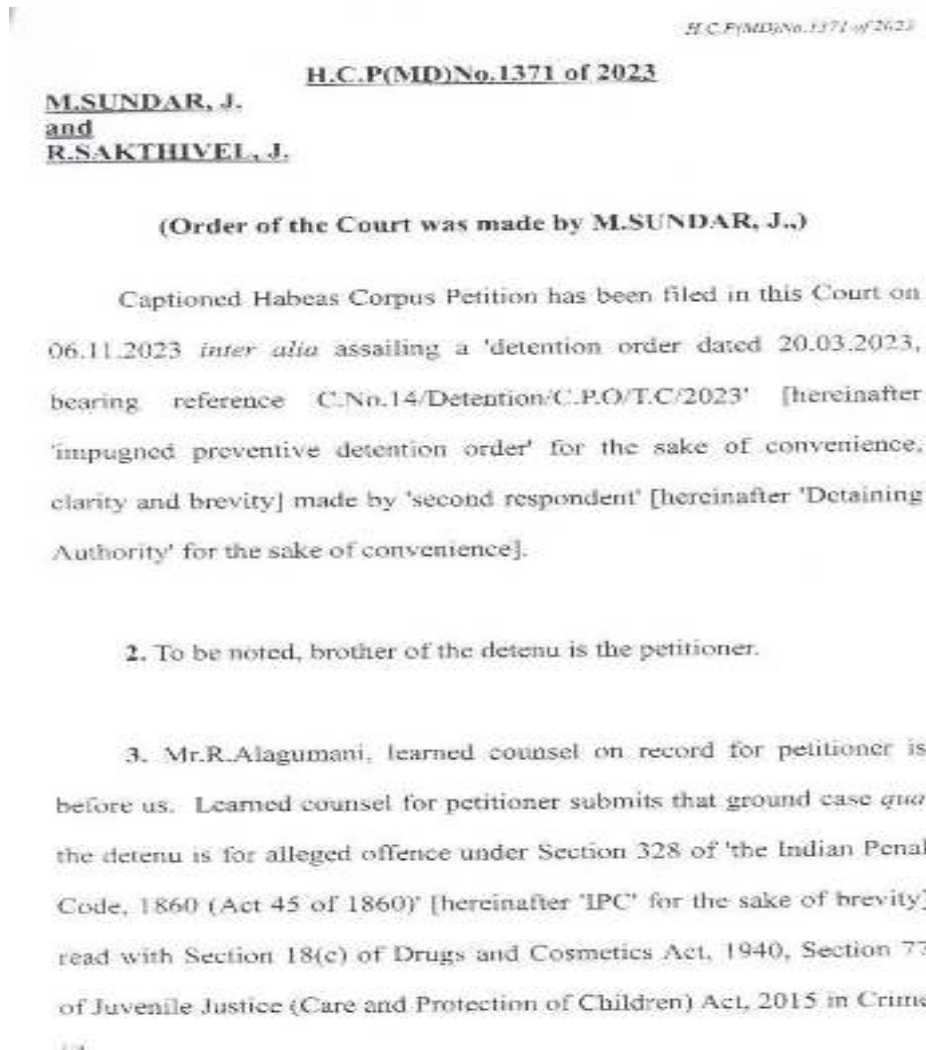
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For Petitioner : Mr.S.Rameshkumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 09.11.2023, this Bench made the following order:





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No.133 of 2023 on the file of Ariyamangalam Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 a similar case bail order relied on in the grounds booklet furnished to the detenu is not similar in nature.

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

[M.S.J.] [R.S.V.J.]
09.11.2023

ps

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this final order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order dated 09.11.2023 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. Today, Mr.S.Rameshkumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel on record for petitioner posited his argument qua challenge to the impugned preventive detention order on the point that similar case bail order relied on by the detaining authority to record subjective satisfaction as regards imminent possibility of detenu being enlarged on bail is not similar. Elaborating on this argument, learned drew our attention to paragraph No.5 of the grounds of impugned prevention detention order. Suffice to say that paragraph No.5 records subjective satisfaction as regards imminent possibility of detenu being enlarged on bail by referring to what according to the detaining authority is a similar case.



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5. Before we proceed further, it is necessary to make it clear that the substratum of the impugned preventive detention order is constituted by one ground case and one adverse case. Detaining authority, for the purpose of recording subjective satisfaction qua the ground case has relied on the bail order of the detenu himself in the adverse case. The adverse case bail order is order dated 04.07.2022 in Cr.M.P.No.2726 of 2022 on the file of learned Principal District and Sessions Judge's Court, Tiruchirappalli. A careful perusal of this adverse case bail order makes it clear that no previous case was pending against the detenu at that point of time (obviously) and that has weighed in the mind of the bail Court in gravitating towards grant of discretionary relief of bail. This means that the comparison of bail order in the adverse case with the ground case for recording subjective satisfaction as regards imminent possibility of detenu being enlarged on bail is a flawed exercise. In this regard, we remind ourselves that imminent possibility is qua probability rather than qua time. If subjective satisfaction is impaired, the impugned preventive detention order become vulnerable for being dislodged in a habeas legal drill.



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6. Learned Prosecutor submitted to the contrary and pointed out that alleged offences in ground case and adverse case are comparable. This does not cut ice with us as we have repeatedly held that determinants for grant of bail are also very significant.

7. Therefore, we dislodge the impugned preventive detention order in the habeas legal drill on hand.

8. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 20.03.2023 bearing reference C.No. 14/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Amrudeen alias Kozhi, Male, aged 22 years, son of Thiru.Babu 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



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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.

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.

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

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
H.C.P(MD)No.1371 of 2023

DATED : 11.12.2023