



H.C.P(MD)No.1419 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1419 of 2023

M.Rajalakshmi

.. Petitioner/mother of the detenu

VS

1.State of Tamil Nadu,
Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

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

.. Respondents

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 M.H.S.Confdl No.



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89/2023 dated 24.08.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Masanam, aged about 24 years, S/o.Muthupandi, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

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.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed in this Court on 16.11.2023.

2.Captioned HCP was listed in the admission board before this Bench on 21.11.2023 and the following order was made and a scanned reproduction of the same is as follows:



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Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity].

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 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 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.]
21.11.2023

VSM

3.The aforementioned admission board order of this Bench captures all essentials, i.e., all facts imperative for appreciating this final order and therefore, we are not setting out the same again in this order. Suffice to say that aforementioned admission board order shall now be read as an integral part and parcel of this final order. This means that the abbreviations, short forms and short references used in the aforementioned admission board order will continue to be used in the instant order also for the sake of convenience and clarity.



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4.As would be evident from admission board order, at the time of admission, Mr.N.Pragalathan, learned counsel posited his challenged to the impugned preventive detention order on the ground that similar case [**Jose Kumar @ Eli's** case] which has been relied on by the detaining authority for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is not really a similar case. This has been captured in paragraph 5 of the admission board order.

5.In the final hearing board today, learned counsel for HCP petitioner elaborating on the above submission drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order and the same reads as follows:

'6..... I am also aware that in a similar case bail has been granted to Jose Kumar alias Eli in Cr.M.P.No.1561/2022 on 09.03.2022 by the Principal Sessions court, Tirunelveli. I therefore infer that there is very likely of Thiru.Masanam coming out on bail in Kallidaikurichi Police Station Crime Number 158/2023; since bails are granted by the appropriate Courts in such cases. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial'



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6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that ***Jose Kumar @ Eli's*** bail order has been furnished to the detenu as part of the grounds booklet at pages 161 to 163. Taking us through ***Jose Kumar @ Eli's*** bail order, learned counsel pointed out that one of the important determinants that has weighed in the mind of the bail Court ie., Sessions Judge's Court is that co-accused had been granted bail. This has been recorded by Sessions Judge in ***Jose Kumar @ Eli's*** bail order. In complete contra distinction in the ground case on hand, there are two accused and as on the date of impugned preventive detention order ie., on 24.08.2023, other accused had not even been nabbed. This by itself will make it clear that comparison of ***Jose Kumar @ Eli's*** bail order with the ground case is a case of comparing Apples and Oranges. This means that subjective satisfaction recorded by detaining authority is impaired is learned counsel's say.

7. In response to the above argument, learned Prosecutor made submissions to the contrary. Learned Prosecutor submitted that the offences in ***Jose Kumar @ Eli's*** case and ground case are broadly



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10.Ergo, the sequitur is, captioned HCP is allowed.

Impugned preventive detention order dated 24.08.2023 bearing reference M.H.S.Confdl.No.89/2023 made by the second respondent is set aside and the detenu Thiru.Masanam, aged 24 years, son of Thiru.Muthupandi, 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.)
20.12.2023

Index : Yes

Neutral Citation : Yes

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Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

(ii) 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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Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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