

Arshiya vs The State Of Tamil Nadu on 7 August, 2023

Author: M.Sundar

Bench: M.Sundar

H.C.P

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

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

H.C.P.No.229 of 2023

Arshiya

.. Petitioner

Vs

1. The State of Tamil Nadu
Represented by its
Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Krishnagiri District
Krishnagiri
3. The Superintendent of Police
Krishnagiri District
Krishnagiri

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<https://www.mhc.tn.gov.in/judis>

H.

4. The Superintendent of Central Prison
Salem District, Salem

5. The Inspector of Police
Gurubarappalli Police Station
Krishnagiri District

... Re

Petition filed under Article 226 of the Constitution of India
issuance of a writ of habeas corpus to call for the records made in
of 2023 dated 08.01.2023 on the file of District Collector and Dist
Magistrate, Krishnagiri District, the second respondent herein and
same as illegal and direct the respondents to produce the detenu Th
aged 26, son of Nowsath now confined in Central Prison, Salem before
Court and set him at liberty

For Petitioner : Mr.K.Kalaikovan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecu

ORDER

[Order of the Court was made by M.SUNDAR, J.,] When the captioned 'Habeas Corpus Petition'
['HCP' for the sake of brevity] was listed in the Admission Board on 15.02.2023, this Court made the
following order:

<https://www.mhc.tn.gov.in/judis> <https://www.mhc.tn.gov.in/judis>
<https://www.mhc.tn.gov.in/judis>

2. The aforementioned Admission Board order captures all essential facts and therefore, we are not
setting out the same again. Be that as it may, we are using the short forms, short references and
abbreviations used in the Admission Board order in this order also for the sake of convenience and
clarity.

3. As would be evident from paragraph 5 of the Admission Board order, at the time of admission,
learned counsel predicated his campaign against the impugned preventive detention order on the
point that the family members of the detenu were not informed about the detention order but in the
final hearing Board today, learned counsel drew our attention to a portion of paragraph 4 of grounds
of impugned preventive detention order, which reads as follows:

'....I am aware that the co-accused Thiru.Vijaykumar @ Viji who was concerned in
this case, has released on bail by the Principal Sessions Court, Krishnagiri, vide in
Crl.M.P.No. 3114/2022, dt.13.12.2022....'

4. Adverting to the above portion, learned counsel submits that though the bail order of the co-accused has been relied on by the Detaining <https://www.mhc.tn.gov.in/judis> Authority in the grounds of impugned preventive detention order, but what has been furnished to the detenu as part of the grounds booklet (pages 306 to 308) is a bail order in a case where the alleged offence is under Section 7 read with Section 20(1) of Cigarette and Other Tobacco Products Act, 2003 and Sections 52 and 59 of Food Safety and Standards Act, 2006 and Section 328 IPC. To be noted, the ground case as set out in the grounds of impugned preventive detention order reads as follows:

'Gurubarappalli Police Station Crime No.206/2022 u/s.147, 148, 448, 294(b), 323, 324, 363, 506(ii) of Indian Penal Code @ 147, 148, 448, 294(b), 323, 324, 363, 307 of Indian Penal Code and was remanded to Judicial custody and lodged at the Sub Jail, Krishnagiri.'

5. Learned counsel for petitioner submitted that while the grounds of impugned preventive detention order refers to a bail order of a co-accused (Thiru.Vijayakumar @ Viji) in the ground case, that bail order has not been furnished to the detenu and some other bail order pertaining to the co-

accused in another case has been produced, this has impaired the detenu's right to make an effective representation and it also makes it clear that there <https://www.mhc.tn.gov.in/judis> is non-application of mind qua the Detaining Authority in making the impugned preventive detention order is learned counsel's say.

6. In response to the above argument, learned Prosecutor submitted to the contrary and stated that that Criminal Miscellaneous Petition number and date (Crl.M.P.No.3114 of 2022, dated 13.12.2022) are correct.

7. We carefully considered the rival submissions. We are of the view that the bail order of co-accused Thiru.Vijayakumar @ Viji has been relied on by the Detaining Authority in the grounds of impugned preventive detention order but the copy has not been furnished to the detenu. This by itself is an impairment of detenu's right to make an effective representation against the impugned preventive detention order. To be noted, such a right is a constitutional guarantee ingrained under Article 22(5) of Constitution of India and this is sacrosanct. Therefore, we sustain the submission of the learned counsel for petitioner.

8. Besides the above point, the narrative thus far leaves us with the view that there is non-application of mind qua the Detaining Authority in making the impugned preventive detention order as bail order of the co-accused in the ground case has been relied on in the grounds of impugned <https://www.mhc.tn.gov.in/judis> preventive detention order but the bail order that was before the Detaining Authority is some other bail order of co-accused in some other case.

9. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 08.01.2023 bearing reference S.C.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Thabaraze, aged 26 years, son of Thiru.Nowsath 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.)
07.08.2023

Index : Yes /No
Neutral Citation : Yes/No
gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem
<https://www.mhc.tn.gov.in/judis> To

1. The Additional Chief Secretary to Government Home, Prohibition and Excise Department Fort St.George Chennai – 600 009
2. The District Collector and District Magistrate Krishnagiri District Krishnagiri
3. The Superintendent of Police Krishnagiri District Krishnagiri
4. The Superintendent of Central Prison Salem District, Salem
5. The Inspector of Police Gurubarappalli Police Station Krishnagiri District
- 6.The Public Prosecutor Madras High Court Chennai <https://www.mhc.tn.gov.in/judis> M.SUNDAR, J., and R.SAKTHIVEL, J., gpa 07.08.2023 <https://www.mhc.tn.gov.in/judis>