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H.C.P.No.471 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**  
and  
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

**H.C.P.No.471 of 2023**

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.. Petitioner

Vs

1.The Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 9.

2.The Commissioner of Police,  
Greater Chennai.

3.The Superintendent of Police,  
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,  
T12 Poonamallee Police Station,  
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 14.09.2022 in Memo No.115/BCDFGISSSV/2022 against the petitioner's brother's son Mubarak Ali, male, aged about 23

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years, S/o.Muhammed Egiya, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Tamil Selvan  
For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
assisted by Mr.M.Sylvester John

**ORDER**

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

This order will now dispose of captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity).

2. When the captioned HCP was listed in the Admission Board, this Court vide order dated 29.03.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 29.03.2023 is as follows:



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M.SUNDAR, J.,  
and  
M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 *inter alia* assailing a detention order dated 14.09.2022 bearing reference No.115/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Guardian of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 392, 397, 427 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.507 of 2022 on the file of T-12 Poonamallee Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(i) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic

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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 detention order has been assailed *inter alia* on the ground that there is a variation in the grounds of detention between the English and Tamil version.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

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

[M.S.J.]

[M.N.K.J.]

29.03.2023

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3. In the Admission Board, the petitioner's campaign against

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the impugned preventive detention order was predicated on the point that there is variation in the grounds of detention in English and Tamil versions but in the final hearing today, the point that was projected turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail. In this regard, the most relevant articulation in the impugned preventive detention order is contained in paragraph 4 and the relevant portion of paragraph 4 reads as follows:

*'4.....In a similar case registered at under section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC in J-4 Kotturpuram Police Station in Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759/2018. Hence, I infer that it is very likely of his coming out on bail in T-12 Poonamallee Police Station Crime Nos.504/2022, 505/2022 and 506/2022 and there is real possibility of his coming out on bail by filing bail application in T-12 Poonamallee Police Station Crime No.507/2022 before the appropriate court, since in similar case bail is granted by the court after a lapse of time.....'*

4. We had the benefit of perusing the bail order in Crl.M.P.



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No.1759 of 2018 dated 01.02.2018 in one *Aravind's* case which is at pages 246 and 247 of the grounds booklet. A careful perusal of *Aravind's* bail order brings to light that in *Aravind's* case, there were two earlier cases but he was out on bail in both cases whereas it is not the case in the matter on hand. In the matter on hand, there are as many as six adverse cases and the bail applications moved by the detenu in other cases are pending. Therefore, comparison of *Aravind's* case with the case on hand for arriving at subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail is clearly a case of comparing apples and oranges. This means that the subjective satisfaction arrived at by the detaining authority by taking *Aravind's* case as bench mark is flawed. Sequitur that inevitably flows from this is that the impugned preventive detention order deserves to be dislodged.

5. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.09.2022 bearing reference No.115/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mubarak Ali, male, aged 23 years, son of Thiru.Muhammed Egiya is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no



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order as to costs.

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(M.S.,J.) (M.N.K.,J.)  
20.04.2023

Index : Yes / No

Neutral Citation : Yes / No

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

To

- 1.The Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,  
Greater Chennai.
- 3.The Superintendent of Police,  
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,  
T12 Poonamallee Police Station,  
Chennai.
- 5.The Public Prosecutor,  
High Court, Madras.

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**M.SUNDAR, J.,  
and  
M.NIRMAL KUMAR, J.,**

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