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H.C.P.Nos.521, 522 & 523 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.Nos.521, 522 and 523 of 2023

M.Manjula	.. Petitioner in H.C.P.No.521 of 2023
R.Sarala	.. Petitioner in H.C.P.No.522 of 2023
V.Muniyammal	.. Petitioner in H.C.P.No.523 of 2023

Vs.

1.The State of Tamil Nadu rep. By its Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Fort St. George, Chennai - 9.	
2.The Commissioner of Police, Avadi City, Avadi, Chennai - 54.	
3.The Superintendent, Central Prison, Puzhal, Chennai.	
4.The Inspector of Police, E-5 Sholavaram Police Station, Sholavaram, Chennai.	.. Respondents in all three HCPs



H.C.P.Nos.521, 522 & 523 of 2023

Prayer in H.C.P.No.521 of 2023: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order dated 25.02.2023 made in detention order No.52/BCDFGISSSV/2023 passed by the second respondent herein quash the same and direct the respondents to produce the body of the detenu Velu @ Velappan, Son of Mari, aged 26 years, who has been detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

Prayer in H.C.P.No.522 of 2023: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order dated 25.02.2023 made in detention order No.53/BCDFGISSSV/2023 passed by the second respondent herein quash the same and direct the respondents to produce the body of the detenu Sarath, Son of Rajendran, aged 22 years, who has been detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

Prayer in H.C.P.No.523 of 2023: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order dated 25.02.2023 made in detention order No.54/BCDFGISSSV/2023 passed by the second respondent herein quash the same and direct the respondents to produce the body of the detenu Vinoth @ Vellai Vinoth, Son of Venkatesan, aged 24 years, who has been detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.



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For Petitioner : Mr.S.Shanmugasundaram
in all three HCPs

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
in all three HCPs

COMMON ORDER

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

This common order will now dispose of captioned three Habeas Corpus Petitions' ('HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity).

2. To be noted, detenus in the captioned three HCPs are co-accused in the same ground case.

3. In this common order, 'H.C.P. No.521 of 2023' shall be referred to as 'I HCP', 'H.C.P. No.522 of 2023' shall be referred to as 'II HCP' and 'H.C.P. No.523 of 2023' shall be referred to as 'III HCP' for the sake of convenience an clarity.

4. The Admission Board orders in the captioned three HCPs are as follows:



I HCP

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'Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 25.02.2023 bearing reference No.52/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother 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, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.27 of 2023 on the file of E-5 Sholavaram Police Station.

4. The aforementioned 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 detention order has been assailed inter alia on the ground that several pages in the grounds of booklet furnished to the detenu are illegible which prevented the detenu to make an effective representation.

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.'



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II HCP

'Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 25.02.2023 bearing reference No.53/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother 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, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.27 of 2023 on the file of E-5 Sholavaram Police Station.

4. The aforementioned 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 detention order has been assailed inter alia on the ground that several pages in the grounds of booklet furnished to the detenu are illegible which prevented the detenu to make an effective representation.

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.'



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III HCP

'Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 25.02.2023 bearing reference No.54/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother 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, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.27 of 2023 on the file of E-5 Sholavaram Police Station.

4. The aforementioned 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 detention order has been assailed inter alia on the ground that several pages in the grounds of booklet furnished to the detenu are illegible which prevented the detenu to make an effective representation.

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



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notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

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5. A perusal of paragraph 5 of the Admission Board orders brings to light that at the time of admission, learned counsel has posited his campaign against the impugned preventive detention orders on the ground that several pages in the grounds booklet furnished to the detenu are illegible (not readable) and this prevented the detenus from making effective representations, however in the Final Hearing Board today, learned counsel predicated his campaign against the impugned preventive detention orders on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenus being enlarged on bail is impaired. Elaborating on this submission, learned counsel adverting to the grounds of impugned preventive detention orders, submitted that the detaining authority has relied on two bail orders for arriving at such subjective satisfaction. One is *Aravind's case* bail order dated 01.02.2018 in CrI.M.P. No.1759 of 2018 on the file of Principal Sessions Judge's Court, Chennai and the other is *Balaji's case* bail order dated 26.05.2021 in CrI.M.P. No.10485 of 2021 on the file of I Additional Sessions Judge's Court, Chennai.



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6. Learned counsel submitted that as regards *Balaji's case*, bail was granted owing to then prevailing Covid-19 situation and attention of this Court is drawn to paragraph 5 of *Balaji's case* bail order which reads as follows:

'5.The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. As regards *Aravind's case* bail order it was submitted that the Tamil translation is incorrect as years of pending cases which have been mentioned with specificity in *Aravind's case* bail order by the learned Sessions Judge have not been set out in translated Tamil version. As this point turns heavily on records before us, learned Prosecutor really does not have much of a say. We had the benefit of perusing the grounds booklet and we find that there is no difficulty in sustaining this submission of learned counsel on this point. In this



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regard, we notice that the literacy level of the detenu in the I HCP is 9th standard (school drop out), II HCP is 11th standard (school drop out) and in III HCP is 10th standard (school drop out) as would be evident from the confession statements.

8. In response to the aforementioned argument, learned Prosecutor submitted that the alleged offences in *Balaji's case* and *Aravind's case* are broadly comparable with the case on hand. This Court has repeatedly held that comparison is not only with regard to the alleged offences but it is pertaining to the determinants/parameters for grant of bail also. In this regard, this Court reminds itself that imminent possibility of detenus being enlarged on bail is not qua time but it is qua probability. In this view of the matter, we have no difficulty or no hesitation in sustaining the submissions of learned counsel for petitioners in the captioned three HCPs that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenus being enlarged on bail is clearly impaired. This means that the impugned preventive detention orders stand vitiated and become liable for being dislodged.



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9. Ergo, the sequitur is, captioned I HCP is allowed. Impugned preventive detention order dated 25.02.2023 bearing reference No.52/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Velu @ Velappan, aged 26 years, Son of Thiru.Mari, 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.

10. Apropos, the sequitur is, captioned II HCP is allowed. Impugned preventive detention order dated 25.02.2023 bearing reference No.53/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Sarath, aged 22 years, Son of Thiru.Rajendran, 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.

11. In the result, the sequitur is, captioned III HCP is allowed. Impugned preventive detention order dated 25.02.2023 bearing reference No.54/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Vinoth @ Vellai Vinoth, aged 24



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years, Son of Thiru.Venkatesan, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this common order to Jail authorities in Central Prison, Puzhal, Chennai.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Avadi City, Avadi, Chennai - 54.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
E-5 Sholavaram Police Station,
Sholavaram, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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