



H.C.P.No.782 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

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

H.C.P.No.782 of 2023

Sanjay Mehada

.. Petitioner

Vs

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City, Office of Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.
- 3.The Inspector of Police,
E-3 Minjur Police Station,
Red Hills Police District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, 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 16.03.2023 in Memo No.65/BCDFGISSSV/2023 against the petitioner Sanjay Mehada, son of Remsingh, aged about 23 years, who is confined at Central Prison, Puzhal, Chennai and set



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aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

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For Petitioner : Mr.V.Paarthiban
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

This order will now dispose of the captioned matter.

2. This order has to be read in conjunction with and in continuation of order dated 04.05.2023 made by another Hon'ble Co-ordinate Division Bench in the Admission Board and proceedings/orders made by this Bench in the listing on 30.08.2023 which are as follows:

Proceedings dated 04.05.2023:

Sl.No.	Date	Main Case: Misc Case No.	Order/Verdict, Reports, Orders or Proceedings with Signatures
1	04/05/2023	W.P. No. 782 of 2023	ABHILASHA Mr. P. Aravindan, learned Advocate Public Prosecutor takes notice for the respondents. With the notice of the respondents. File with the order/verdict

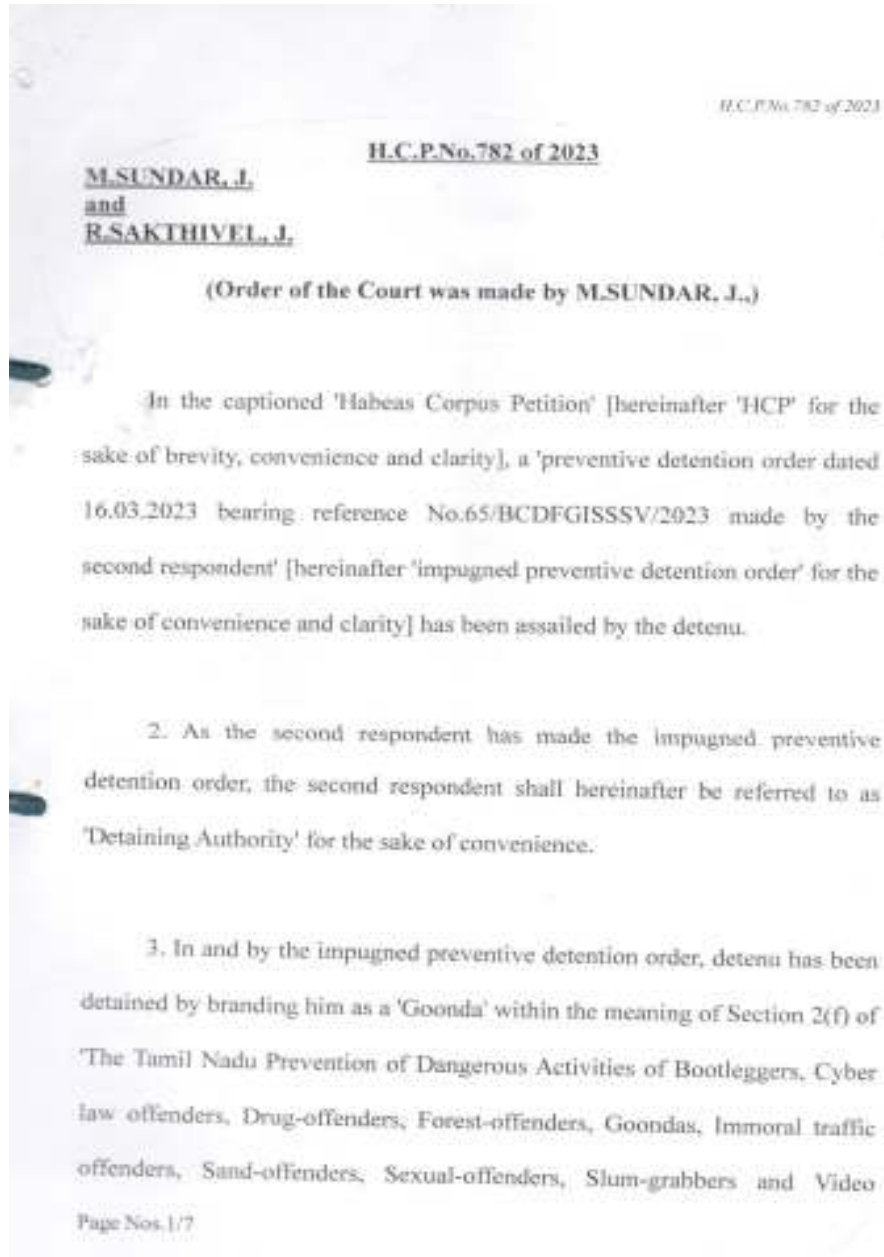


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Proceedings dated 30.08.2023:





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Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

4. The impugned preventive detention order says that the detenu hails from Bagavali Village, Narvalli Post, Cooksi Taluk, Thar District, State of Madhya Pradesh. We are informed that 'Thar' should read as 'Dhar' as regards the name of the District. Be that as it may, though several grounds have been raised in the support affidavit que captioned HCP, Mr.V.Paurthiban, learned counsel on record for petitioner, advertent to grounds of impugned preventive detention order submitted that there are two adverse cases and one ground case, all on the file of E-3 Minjur Police Station. The detenu was arrested in the ground case on 22.01.2023 (Crime No.27 of 2023). Advertent to the grounds of impugned preventive detention order, more particularly, page No.4 thereof, learned counsel submitted that from the confession statement of the detenu in the ground case, it came to light that the detenu was involved in two other cases i.e., adverse cases being Crime Nos.41 of 2022 and 565 of 2022 (the dates of occurrences are 04.02.2022 and 04.12.2022 respectively) and based on such confession detenu was arrested on the same day (22.01.2023) in the adverse case also.

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Therefore, the detenu was arrested and remanded in all three cases (one ground case and two adverse cases) on 22.01.2023.

5. Learned counsel pointed out that the impugned preventive detention order has been made by the Detaining Authority only on 16.03.2023 and therefore, 'live and proximate link between the grounds of detention and purpose of detention' has snapped. In support of his contention, learned counsel pressed into service *Bhawarlal Ganeshmalji* case [*Bhawarlal Ganeshmalji Vs. State of Tamil Nadu* and another reported in (1979) 1 SCC 465]. Learned counsel submitted that *Bawarlal* case has stood the test of time as it has been followed by Hon'ble Supreme Court as recently as on 30.09.2022 in *Sushanta Kumar Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others* reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333], most relevant paragraphs in *Sushanta Kumar Banik's* case as reported in LiveLaw are paragraph Nos.18 to 20 and the same read as follows:

'18. Chirappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu, (1979) 1 SCC 465, has explained as follows:

"It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of

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smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In each case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened."

(Emphasis supplied)

19. *Sahyosachi Mukharji, J.* (as the learned Chief Justice then was) in *Shafiq Ahmed v. District Magistrate, Meerut and Ors.* (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that "there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go". However, the learned Judge observed that "whether the delay was unreasonable depends on the facts and circumstances of each case."

20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of



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the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.'

6. Furthering his argument in the above direction, learned counsel submitted that 'live and proximate link between the grounds of detention and purpose of detention' has certainly snapped as the date of arrest in all the three cases is 22.01.2023 but the impugned preventive detention order has been made only on 16.03.2023. Learned counsel submitted that this ground has been specifically raised in the support affidavit vide paragraph No.8 and he drew our attention to the same which reads as follows:

'8. The live and proximity link between the grounds of detention and purpose of detention is snapped in arresting the detenu. The police arrested the detenu on 22.01.2023 and the detention order was passed on 16.03.2023.'

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7. We find from the case file placed before us that Mr.F.Raj Thilak, learned State Additional Public Prosecutor has accepted notice for respondents on 04.05.2023 but an order of admission / issue of *Rule Nisi* has not been made. In the light of the narrative thus far, Admit. Issue *Rule Nisi* but returnable by 18.09.2023. To be noted, shorter date is being resorted to by taking recourse to sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' [hereinafter 'MHC' Writ Rules' for the sake of convenience] as reference to Rule Committee regarding shorter returnable date qua *Rule Nisi* in habeas corpus petitions is awaiting a decision.

8. Learned Prosecutor submitted that it may be necessary to file counter affidavit and explain the time consumed i.e., time as between 22.01.2023 and 16.03.2023 in response to paragraph No.8 of the support affidavit. Request of learned Prosecutor acceded to. We make it clear that the main HCP will be taken up and heard out in the next listing.

9. List on 18.09.2023.


[M.S.J.,] [R.S.V.J.,]
30.08.2023

mk



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3. As regards the Admission Board order dated 04.05.2023, the same has been adverted to and Rule Nisi has thereafter / since been issued vide paragraph 7 of aforementioned proceedings/orders made in the 30.08.2023 listing.

4. The aforementioned proceedings/orders made in the 30.08.2023 listing 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 30.08.2023 proceedings/orders shall continue to be used in the instant final order also for the sake of convenience and clarity.

5. Today, Mr.V.Paarthiban, learned counsel for HCP petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all the four respondents are before us.

6. Adverting to aforementioned 30.08.2023 proceedings, learned Prosecutor submits that a counter affidavit sworn to by the detaining authority (second respondent) dated 12.09.2023 has since been filed. Learned Prosecutor drew our attention to paragraph 12 of the counter affidavit and submitted that the same answers the 'live



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and proximate link snapping' point that has been raised by petitioner in paragraph 8 of support affidavit in captioned HCP and to be noted, the same has been captured in the previous proceedings. In addition to paragraph 12 of the counter affidavit, learned Prosecutor submitted on instructions that Hindi translation of the documents in the grounds booklet had to be provided to the detenu and time was consumed in getting the translation done in Hindi. We carefully considered paragraph 8 of the support affidavit and paragraph 12 of the counter affidavit. We find that the reasons set out in paragraph 12 of the counter affidavit as well as the reason that is now being projected by the learned Prosecutor are merely routine procedural matters and therefore we have no difficulty in saying that the time consumed in making the impugned preventive detention order qua date of arrest has not been convincingly explained. This means that we sustain the live and proximate link having snapped point.

7. This Bench is acutely conscious of the fact that if a preventive detention order is vitiated and becomes liable for being dislodged on one point it may not be necessary to advert to other point/s. However, considering the nature of point that has been projected by Mr.V.Paarthiban, learned counsel for petitioner, we deem



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it appropriate to set out the same, discuss and give our dispositive reasoning infra on the second point also.

8. Second point raised by learned counsel for petitioner is that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired as there is no material to support the same except a bald averment that bail has been granted in similar cases. Learned counsel goes on to add that such bald averments tantamount to relying on '*extraneous material*' i.e., material that has neither been adverted to with clarity/specificity in the grounds of impugned preventive detention order nor copies of which have been furnished to the detenu.

9. Elaborating his argument in this direction, learned counsel drew our attention to a portion of paragraph 4 of grounds of impugned preventive detention order which reads as follows:

'4..... Hence, I infer that it is very likely of his coming out on bail in E-3 Minjur Police Station Cr.No.27/2023 and there is real possibility of his coming out on bail in E-3 Minjur Police Station Cr.Nos.43/2022 and 565/2022 case by filing bail application before the appropriate court, since in similar case bail is granted by



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the court after a lapse of time....'

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10. Thereafter, advertent to the grounds booklet, learned counsel submitted that the grounds booklet also does not contain any similar case bail order or any other material to support the aforementioned subjective satisfaction that has been arrived at by the detaining authority.

11. In response to the above argument, learned Prosecutor submitted that the detaining authority has arrived at subjective satisfaction by taking note of the fact that bail has been granted by several Courts in similar cases and therefore it cannot be contended that the subjective satisfaction is impaired and / or say that there is reference to extraneous material.

12. We carefully considered the rival submissions. The material that was placed before the detaining authority i.e., the material that was placed by sponsoring authority and/or which the detaining authority has relied on to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail should be (a) articulated with clarity/specificity in the grounds of impugned preventive detention order and (b) copies of the same should be



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provided to the detenu to enable the detenu to make an effective representation qua the impugned preventive detention order. To be noted, detenu's right to make an effective representation against a preventive detention order is a sacrosanct constitutional right ingrained in Article 22(5) of the Constitution of India.

13. Be that as it may, as regards setting out similar case with clarity/specificity and 'extraneous material', learned counsel for petitioner pressed into service two case laws and they are oft quoted (i) ***Rekha's case (Rekha Vs. State of Tamil Nadu reported in (2011) 5 SCC 244)*** and (ii) ***Ameena Begum's case (Ameena Begum Vs. The State of Telangana & Ors. reported in 2023 Livelaw SC 743)*** respectively.

14. To be noted, both ***Rekha's case*** and ***Ameena Begum's case*** pertain to challenge to preventive detention orders qua habeas legal drills and therefore both cases are clearly comparable qua case on hand. In other words, the facts in ***Rekha's case*** and ***Ameena Begum's case*** are comparable qua facts in the habeas legal drill on hand.

15. As regards ***Rekha's case***, relevant paragraphs are



paragraphs 7 and 27 which read as follows:

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'7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order. '

'27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule,



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that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.'

16. As regards **Ameena Begum's case**, relevant paragraph is paragraph 25 and the same reads as follows:

'25. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, our understanding of the law for deciding the legality of an order of preventive detention is that even without appropriate pleadings to assail such an order, if circumstances appear therefrom raising a doubt of the detaining authority misconceiving his own powers, the Court ought not to shut its eyes; even not venturing to make any attempt to investigate the sufficiency of the materials, an enquiry can be made by the Court into the authority's notions of his power. Without being remotely concerned about the sufficiency or otherwise of the materials on which detention has been ordered, the Court would be justified to draw a conclusion, on proof from the order itself, that the detaining authority failed to realize the extent of his own powers. This is quite apart from



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questioning the action for want of sufficient materials that were before the detaining authority. The authority for the detention is the order of detention itself, which the detenu or the Court can read. Such a reading of the order would disclose the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen. Any order of a detaining authority evincing that the same runs beyond his powers, as are actually conferred, would not amount to a valid order made under the governing preventive detention law and be vulnerable on a challenge being laid. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether

(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the *sine qua non* for the exercise of the power not being satisfied;

(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore *ultra vires*;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts



of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.

Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong.'

17. From a careful perusal of ***Rekha's case***, it becomes clear that when a detaining authority arrives at subjective satisfaction qua



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imminent possibility of the detenu being enlarged on bail though it is permissible it is circumscribed by the requirement that the purported similar case details have to be given and bald statement of the authority cannot be believed. This is the reason why we opened with observation that similar case details have to be set out with clarity and specificity. In the case on hand, from a portion of paragraph 4 of the grounds of impugned preventive detention order that has been extracted and reproduced supra, it is clear that it is not just bald but too generic and sweeping and clearly lacking in specificity. Therefore, the impugned preventive detention order is clearly hit by **Rekha's** principle. In addition to this, as regards **Ameena Begum's case** rendered very recently i.e., 04.09.2023 vide paragraph 25, Hon'ble Supreme Court has made an adumbration on what a Constitutional Court would examine when called upon to test the legality of preventive detention orders. In this adumbration, we are directly concerned with the point set out as 25(ii) which reads as follows:

'25 (ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;'



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18. Careful perusal of paragraph 25(ii) brings to light that when subjective satisfaction is based on material extraneous to scope and purpose of the Statute it would vitiate the preventive detention order. In the case on hand, absent details of purported similar case in which bail has been granted it is a clear case of basing subjective satisfaction on material extraneous to the scope and purpose of the Statute.

19. Therefore, we have no hesitation in saying that if the tests set out in paragraph 25(ii) of the **Ameena Begum's case** are applied i.e., test formulated and set out as an adumbration by Hon'ble Supreme Court i.e., test which a Constitutional Court when called upon to test a preventive detention order would apply, the impugned preventive detention order clearly gets vitiated and the same deserves to be dislodged in this habeas legal drill.

20. In the light of the narrative, discussion and dispositive reasoning set out supra, impugned preventive detention order deserves to be dislodged in the habeas legal drill on hand.

21. Before writing the operative portion of the order, learned



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Prosecutor drew our attention to the two adverse case viz., Crime No.43 of 2022 (date of occurrence 04.02.2022), Crime No.565 of 2022 (date of occurrence 04.12.2022) and the ground case being Crime No.27 of 2023 for alleged offences under Sections 341, 294(b), 323, 392, 397, 336, 506(ii) IPC on the file of the E3 Minjur Police Station and submitted that the cases are pending in the Court of Judicial Magistrate II, Ponneri. There are four accused in all and the other three accused who are not from this State have not been secured as yet. Therefore, considering the unique nature of the matter, learned Prosecutor requested us to consider imposing a condition that the detenu shall sign before the jurisdictional Magistrate every Monday and Friday and also give local address where he would be residing with a caveat that the detenu shall co-operate with the investigation in their effort to secure the other accused. This request by itself makes it clear that the case on hand is within the realm of law and order. Therefore, making an exception and making it clear that such a condition is an extreme exception and therefore will not serve as a precedent in all habeas legal drills, considering the nature of the two adverse cases and the ground case and the other attendant facts and circumstances of the case alluded to elsewhere supra, we impose a condition that the detenu

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Thiru.Sanjay Mehada, aged 23 years, son of Thiru.Remsingh shall sign before the jurisdictional Magistrate i.e., Judicial Magistrate II, Ponneri every Monday and Friday at 10.30 a.m. till 15.03.2024. To be noted, we have arrived at this 15.03.2024 date by taking into account the fact that the impugned preventive detention order, if not interfered with in this habeas legal drill would have continued to operate till that date.

22. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.03.2023 bearing reference No.65/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Sanjay Mehada, aged 23 years, son of Thiru.Remsingh, is directed to be set at liberty forthwith (subject to the condition set out in preceding paragraph) 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.)
26.09.2023

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 – 600 066.

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City, Office of Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.
- 3.The Inspector of Police,
E-3 Minjur Police Station,
Red Hills Police District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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