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H.C.P.No.788 of 2023

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.788 of 2023

Bharvathi  
W/o.Balu

.. Petitioner / mother of Detenue

Vs.

- 1.The State of Tamil Nadu,  
Rep 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,  
Nagapattinam District,  
Nagapattinam.
- 3.The Superintendent of Police,  
Nagapattinam District,  
Nagapattinam.
- 4.The Inspector of Police,  
Vedaranyam Police Station,  
Vedaranyam,  
Nagapattinam District.

Page Nos.1/8



H.C.P.No.788 of 2023

WEB COPY

5.The Superintendent,  
Central Prison, Thiruchirappalli,  
Thiruchirappalli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 19.02.2023 made in detention order in C.O.C.No.06/2023 passed by the 2<sup>nd</sup> respondent herein quash the same and direct the respondents to produce the body of the detenu Thiru.Silon @ Sellathudai, aged 45/2023, son of Balu, who has been detained in Central Prison at Thiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.R.Murugabharathi

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

### **ORDER**

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 19.02.2023 bearing reference C.O.C.No.06/2023' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth

Page Nos.2/8



*H.C.P.No.788 of 2023*

respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.392 of 2022 on the file of Vedaranyam Police Station for alleged offences under Sections 294(b), 332, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the



H.C.P.No.788 of 2023

impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.R.Murugabharathi, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the final hearing Board today, Mr.R.Murugabharathi, learned counsel for petitioner submitted that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

*'... However in similar case (i.e.) (1) Crime Number 114/2022 u/s 294(b), 324, 307 IPC of Vedaranyam Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.1000/2022, dated 26.04.2022 to an accused by name Thiru.Ayyappan, Male, Aged 28/2022, S/o Kumar and (2) In Crime Number.114/2022 u/s 294(b), 324, 307 IPC of Vedaranyam Police Station, in Nagapattinam District bail*



WEB COPY



H.C.P.No.788 of 2023

*was granted by Court of the Principal District Sessions Judge, Nagapattinam in Cr.M.P.No.4139/2022, dated 13.12.2022 to an accused by name Thiru.Sabari @ Sabarinathan, Male Aged 36/2022. ...'*

6. Adverting to the aforementioned paragraph, learned counsel submitted that Crime No.114 of 2022 on the file of Vedaranyam Police Station is **Sabari @ Sabarinathan's** case [hereinafter '**Sabari's case**' for convenience] and CrI.M.P.No.1000 of 2022 and order dated 26.04.2022 made by learned Principal District and Sessions Judge, Nagapattinam is **Ayyappan's** case. Learned counsel submitted that Sabari's case bail order has been furnished to the detenu in the grounds booklet. Adverting to this bail order at page 143 of the grounds booklet learned counsel pointed out that it is an Anticipatory Bail order and therefore a comparison of the same with the case on hand to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed, is learned counsel's say. Thereafter learned counsel drew our attention to pages 141 and 142 of the grounds booklet wherein **Ayyappan's** bail order has been furnished to the detenu. Adverting to Ayyappan's bail order, learned counsel pointed out



*H.C.P.No.788 of 2023*

that it is a case where a counter case [Crime No.115 of 2022] had been registered and therefore, the comparison is clearly a case of comparing Apples and Oranges.

7. In response to the aforementioned submission, learned Additional Public Prosecutor submitted to the contrary and state that offences in Sabari's case and Ayyappan's case are broadly comparable with the case on hand.

8. This Court has repeatedly held that it is not mere comparison of alleged offences or charges but it is a comparison of determinants and parameters for grant of bail which should be taken into account for a detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. In this view of the matter Sabari's case is clearly one, which ought not to have been relied on as it is an Anticipatory Bail order. Likewise we have no difficulty in accepting that Ayyappan's case bail order is not comparable, as Ayyappan's case is one, where a counter case had been registered. The sum sequitur of this is,



H.C.P.No.788 of 2023

subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is clearly flawed.

Further sequitur is, this vitiates the impugned preventive detention order and leaves it liable for being dislodged in this habeas drill.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.02.2023 bearing reference C.O.C.No.06/2023 made by the second respondent is set aside and the detenu Thiru.Silon @ Sellathurai, aged 45 years, son of Thiru.Balu 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.)  
07.08.2023

Index : Yes  
Speaking order  
Neutral Citation : Yes  
rsi

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

Page Nos.7/8



WEB COPY



*H.C.P.No.788 of 2023*

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

rsi

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,  
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,  
Nagapattinam District,  
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- 4.The Inspector of Police,  
Vedaranyam Police Station,  
Vedaranyam, Nagapattinam District.
- 5.The Superintendent,  
Central Prison, Thiruchirappalli,  
Thiruchirappalli District.
- 6.The Public Prosecutor  
Madras High Court, Chennai.

**H.C.P.No.788 of 2023**

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Page Nos.8/8