



WEB COPY



H.C.P.No.870 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 21.09.2023**

**CORAM**

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

**H.C.P.NO.870 OF 2023**

R.Mary

.. Petitioner

**VS.**

1.The Additional Chief Secretary to the  
Government  
Home, Prohibition and Excise Department  
Secretariat,  
Chennai – 600 009.

2.The Commissioner of Police  
Greater Chennai City  
Vepery,  
Chennai – 7.

3.The Superintendent  
Central Prison  
Puzhal, Chennai – 66.

4.The Inspector of Police (Crime)  
Madipakkam Police Station  
Chennai – 61.

.. Respondents



H.C.P.No.870 of 2023

**PRAYER:** Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records in Memo No. BCDFGISSSV/111/2023 dated 17.04.2023 on the file of the second respondent, quash the detention order dated 17.04.2023 and direct the production of the detenu B.Ramesh son of Bargunan Nadar detained at the Central Prison, Puzhal, Chennai as Goonda under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi

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.]**

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 17.04.2023 bearing reference Memo No.111/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2.Impugned preventive detention order has been made under



H.C.P.No.870 of 2023

'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. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.87 of 2023 on the file of S-7 Madipakkam Police Station for alleged offence registered under Sections 294(b), 342, 323, 355, 364(A), 387 and 506(ii) of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 294(b), 342, 323, 355, 307, 364(A), 387 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.R.Subadra Devi, learned counsel on record for petitioner



H.C.P.No.870 of 2023

and Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind for all the respondents are before us.

5.Today, Ms.R.Subadra Devi learned counsel on record for HCP petitioner drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

*'... Further, it is pertinent to note that in a case registered at J.6 Thiruvannamiyur Police Station in Crime No.81/2023, u/s.294(b), 341, 324, 307 & 506(ii) IPC, bail was granted to the accused Thiru.Vinoth by the Court of Hon'ble Principal Sessions Judge at Chennai, in Crl.M.P.No.5571/2023. Hence, I infer that it is very likely of his coming out on bail in S-7 Madipakkam Police Station Crime Nos.87/2023 and 93/2023 cases, since, in similarly placed cases bails were granted by courts after a lapse of time. ...'*

6.Learned counsel submitted that the aforementioned **Vinoth**



H.C.P.No.870 of 2023

**case** has been relied on by the detaining authority as a similar case to arrive at subjective satisfaction that there is imminent possibility of detenu in the case on hand (Thiru. Ramesh) being enlarged on bail. Learned counsel drew our attention to the ground case as captured in the grounds of impugned preventive detention order and the same reads as follows:

*'... Based on the confession statement of the accused Thiru.Murugaraj, the Sections of the above case were altered as u/s.294(b), 342, 323, 355, 307, 364(A), 387, 506(ii) IPC. Further, their remand period was extended till 17.04.2023 periodically. ...'*

7.Learned counsel submitted that the alleged offences in the ground case and **Vinoth case** are vastly different and therefore subjective satisfaction arrived at by the detaining authority (qua imminent possibility of detenu being enlarged on bail) is flawed.

8.In response to the above argument, learned Additional Public



H.C.P.No.870 of 2023

Prosecutor submitted that offences in the ground case and ***Vinoth case*** are broadly comparable.

9. We carefully considered the rival arguments. We find that in the ground case even according to the prosecution theory, Section 364A of IPC is one of the alleged offences but this is not there in ***Vinoth's case*** as would be evident from the extract *supra*. 364A of IPC-Kidnapping for ransom, etc. is an offence which can attract even capital punishment but none of the offence in ***Vinoth's case*** attracts capital punishment. This itself is very vital difference between the ground case and *Vinoth's case*. Therefore, this Court has no difficulty in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired / flawed. This means that the impugned preventive detention order is vitiated and becomes liable for being dislodged in a habeas legal drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned



H.C.P.No.870 of 2023

preventive detention order dated 17.04.2023 bearing reference BCDFGISSSV

No.111/2023 made by the second respondent is set aside and the detenu

Thiru. Ramesh, male, aged 51 years, son of Thiru. Burgunan Nadar 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.)

**21.09.2023**

Index : Yes

Neutral Citation : Yes

Speaking order

TK

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



H.C.P.No.870 of 2023

To

WEB COPY

- 1.The Additional Chief Secretary to the  
Government  
Home, Prohibition and Excise Department  
Secretariat,  
Chennai – 600 009.
- 2.The Commissioner of Police  
Greater Chennai City  
Vepery,  
Chennai – 7.
- 3.The Superintendent  
Central Prison  
Puzhal, Chennai – 66.
- 4.The Inspector of Police (Crime)  
Madipakkam Police Station  
Chennai – 61.
- 5.The Public Prosecutor  
High Court, Madras.



WEB COPY



H.C.P.No.870 of 2023

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

TK

**H.C.P.NO.870 OF 2023**

**21.09.2023**