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H.C.P.No.905 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

**H.C.P.No.905 of 2023**

Mareeswaran

S/o.Ayyanar

.. Petitioner

Vs

1. State of Tamil Nadu  
Rep. by the Secretary  
Home, Prohibition and Excise Department  
Fort St.George  
Chennai-600 009.
2. The District Magistrate and District Collector  
O/o. The District Magistrate and District Collector  
Tiruppur District  
Tiruppur.
3. The Superintendent of Police  
Tiruppur District.
4. The Superintendent of Prison  
Central Prison  
Coimbatore.
5. The Inspector of Police  
Vellakovil Police Station  
Tiruppur District.

.. Respondents

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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 vide Cr.M.P.No.15/GOONDA/2023 dated 07.04.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner namely, Marreswaran, son of Ayyanar, aged 27 years, (who is presently under going detention in the Central Prison, Coimbatore) before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.Narayana Prasadh  
For Respondents : Mr.E.Raj Thilak  
Additional Public Prosecutor  
Assisted by Mr.Aravind .C

## **O R D E R**

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by detenu assailing a 'preventive detention order dated 07.04.2023 bearing reference Cr.M.P.No.15/GOONDA/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.



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2. Impugned preventive 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.36 of 2023 on the file of Vellakovil Police Station for alleged offence under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 341, 392 read with 34 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.



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4. Mr.P.Narayana Prasadh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised but Mr.P.Narayana Prasadh, learned counsel for HCP petitioner in final hearing Board today, predicated his campaign against the impugned preventive detention order on one point and that one point turns on the Detaining Authority not having recorded subjective satisfaction (in the grounds of impugned preventive detention order) regarding imminent possibility of the detenu being enlarged on bail. This Court had the benefit of perusing the grounds of impugned preventive detention order and we find that the grounds of impugned preventive detention order is silent about the imminent possibility of the detenu being enlarged on bail.

6. As the aforementioned point turns on records before us and as the grounds of impugned preventive detention order cannot be improved by filing a counter or by making submissions at the Bar, learned Prosecutor



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really does not have much of a say.

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7. This Court has repeatedly held that procedural fairness is an integral part of making of a preventive detention order. In ***Sugashini***'s case reported in **2023:MHC:3519** (Neutral Citation of Madras High Court) {order dated 31.07.2023 in ***H.C.P.No.531 of 2023 - Sugashini Vs. State of Tamil and three others***} and in ***Vinothini***'s case reported in **2023:MHC:4241** (Neutral Citation of Madras High Court) {order dated 11.09.2023 in H.C.P.Nos.491 of 2023, etc., batch – ***Vinothini Vs. The Additional Chief Secretary to Government and others***}, preventive detention orders branding detenus therein as 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982 were assailed and we held that procedural fairness in making preventive detention orders is an essential facet of Article 21 of The Constitution of India. Procedural fairness is sacrosanct with regard to making the impugned preventive detention order. Non-application of mind and absence of procedural fairness in making of the preventive detention order which is grundnorm of the Constitutional philosophy as laid down by Hon'ble Supreme Court in ***Sambu Nath Sarkar Vs. State of West Bengal*** reported in (1973) 1 SCC 856, are the two grounds



which vitiate the impugned preventive detention order in the case on hand.

Relevant portion in **Vinothini's** case is paragraph 6.7 and the same reads as follows:

'6.7 As regards the habeas legal drill on hand, it is a legal contestation between a detenu or a HCP petitioner on behalf of the detenu on one side and the State on the other. It turns on technicalities and procedural fairness in making of the preventive detention order and there is no trial. In this regard, we remind ourselves that in A.K.Gopalan Vs. State of Madras reported in AIR 1950 SC 27: 1950 SCC 228, it was held that the charter of rights adumbrated in Articles 19 and 21 are distinct and the lone dissenter was Hon'ble Mr. Justice Fazl Ali (as His Lordship then was). The dissenting view of Hon'ble Mr. Justice Fazl Ali in A.K.Gopalan's case was subsequently held to be correct law impliedly vide R.C.Cooper Vs. Union of India reported in (1970) 1 SCC 248 and directly vide Sambu Nath Sarkar Vs. State of West Bengal reported in (1973) 1 SCC 856. Therefore, the obtaining legal position as regards a habeas legal drill is, procedural fairness is an integral part of making preventive detention orders and a habeas legal drill would primarily test this inter-alia on technicalities attendant thereto. In this view of the matter also, it is a contestation qua the State. '

8. This Court also reminds itself that preventive detention is not a punishment and habeas corpus writ is a high prerogative writ. In this



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regard, we remind ourself of *A.K.Gopalan principle [A.K.Gopalan Vs. The*

*District Magistrate, Malabar reported in 1948 SCC OnLine Mad 257 :*

*(1949) 62 LW 103]* where Hon'ble Mr.Justice Subba Rao, as a Hon'ble Judge of this Court as His Lordship then was said that Habeas Corpus is a high prerogative right, a great constitutional remedy for all manner of illegal confinement and noted that it is described in England as the Magna Carta of British liberty. Therefore, we are impelled to say that a habeas corpus petition is a high prerogative writ.

9. In the light of the narrative, discussion and dispositive reasoning thus far, we interfere with the impugned preventive detention order on the grounds of non-application of mind and absence of procedural fairness in making of the same.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.04.2023 bearing reference Cr.M.P.No.15/GOONDA/2023 made by the second respondent is set aside and the detenu Thiru.Mareeswaran, aged 27 years, son of Thiru.Ayyanar, 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.



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(M.S.,J.)

(R.S.V.,J.)

27.09.2023

Index : Yes/No  
Neutral Citation : Yes/No  
Speaking / Non-speaking order  
*mk*

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

To

1. State of Tamil Nadu  
Rep. by the Secretary  
Home, Prohibition and Excise Department  
Fort St.George  
Chennai-600 009.
2. The District Magistrate and District Collector  
O/o. The District Magistrate and District Collector  
Tiruppur District  
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3. The Superintendent of Police  
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4. The Superintendent of Prison  
Central Prison  
Coimbatore.
5. The Inspector of Police  
Vellakovil Police Station  
Tiruppur District.
6. The Public Prosecutor  
High Court, Madras.

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

*mk*

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