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H.C.P.No.1166 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.1166 of 2023**

A.Velankanni

.. Petitioner

Vs

1.The Secretary to the Government of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.

2.The Commissioner of Police,  
Tambaram City (Goondas Section),  
Sholinganallur, Chennai.

3.The Superintendent of Prison,  
O/o.Central Prison, Puzhal, Chennai.

4.The Inspector of Police,  
O/o. The Inspector of Police,  
T-18, Thazhambur Police Station,  
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 Memo No.BCDFGISSSV 16/2023 on the file of the second respondent, quash the detention order dated 24.04.2023 and direct the respondents to produce detenu A.Balaji, son of Arumugam, detained at Central Prison, Puzhal, under the Tamil Nadu Act 14 of

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1982 before this Court and set him at liberty.

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For Petitioner : Mr.P.K.Ganesh  
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 captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 06.07.2023, the following proceedings/order was made:

*' H.C.P.No.1166 of 2023*

*M.SUNDAR, J.*

*and*

*R.SAKTHIVEL, J.*

*(Order of the Court was made by M.SUNDAR, J.,)*

*Captioned Habeas Corpus Petition has been filed in this Court on 21.06.2023 inter alia assailing a 'detention order dated 24.04.2023 bearing reference BCDFGISSSV No.16/2023' (hereinafter 'impugned preventive detention order' for the sake of convenience and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring*



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*Authority.*

*2. To be noted, mother of the detenu is the petitioner.*

*3. Mr.P.K.Ganesh, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b), 341, 384, 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.76 of 2023 on the file of T18 Thazhambur Police Station.*

*4. The aforementioned impugned preventive 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 impugned preventive detention order has been assailed inter alia on the ground that the similar case relied on by the Detaining Authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail, is not really similar.*

*6. Prima facie case made out for admission. Admit. Issue Rule Nisi returnable by four weeks.*

*7. Mr.E.Raj Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

3. The aforementioned proceedings/order dated 06.07.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 06.07.2023 shall now be read as an integral part and parcel of the



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instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Mr.P.K.Ganesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all the respondents are before us.

5. As would be evident from paragraph 5 of the Admission Board order at the time of admission, the point that the similar case relied on by the detaining authority to arrive at subjective satisfaction is not really similar was raised but today in the final hearing, Mr.P.K.Ganesh, learned counsel on record for petitioner changed his line of attack against the impugned preventive detention order and submitted that the similar case bail order has not been furnished to the detenu. Learned counsel for petitioner drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

*'5..... However, it is pertinent to note that in a similar case registered at T-1 Tambaram P.S. Cr.No.1/2021 u/s. 147, 148, 341, 294(b), 336, 307,*



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*506(ii) IPC, bail was granted to the accused Nishanth, Kishore Kumar @ Kishore and Maniyarasu @ Manda Vishnu by the Hon'ble Principal Sessions Judge of Kancheepuram District at Chengalpattu in Crl.M.P.No.258/2021 on 05.02.2021. In the ground case also, no bail application has been filed in his behalf.....'*

6. The aforementioned similar case bail order relied on by the detaining authority has not been furnished in the grounds booklet served on the detenu. In the Index of the grounds booklet at Sl. No.27 the description for pages 139 to 175 is 'Tambaram Police Station Crime No.01/2021' but pages 139 to 175 are missing in the grounds booklet. We had the benefit of perusing the grounds booklet. We are convinced that it is a clear case of infraction of Article 22(5) of the Constitution of India as the detenu's right to make an effective representation qua impugned preventive detention order has been impaired.

7. As the matter turns heavily on records, learned Prosecutor really does not have much of a say.



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8. We have no hesitation in persuading ourselves to say that detenu's sacrosanct constitutional right to make an effective representation against the impugned preventive detention order has been impaired owing to non-furnishing of aforementioned similar case bail order relied on by the detaining authority. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India leading to the inevitable sequitur that impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.04.2023 bearing reference BCDFGISSSV No.16/2023 made by the second respondent is set aside and the detenu Thiru.A.Balaji, aged 21 years, Son of Thiru.Arumugam, 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.)  
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 - 66.**

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To

- 1.The Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,  
Tambaram City (Goondas Section),  
Sholinganallur, Chennai.
- 3.The Superintendent of Prison,  
O/o.Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,  
O/o. The Inspector of Police,  
T-18, Thazhambur Police Station,  
Chennai.
- 5.The Public Prosecutor,  
High Court, Madras.



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

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