



H.C.P.Nos.1407 & 1410 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM

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

H.C.P.Nos.1407 & 1410 of 2023

H.C.P.No.1407 of 2023

Vasanthi

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore - 2.
- 5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.

.. Respondents



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Selva

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Special Prison for Women, Vellore.
- 5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.

.. Respondents

Prayer in HCP No.1407 of 2023: 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 30.06.2023 in D.O.No.65/2023-C2 against the petitioner's husband Viji @ Vijaykumar, Male, aged 39 years, S/o.Sivanandam, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.



H.C.P.Nos.1407 & 1410 of 2023

Prayer in HCP No.1410 of 2023: 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 30.06.2023 in D.O.No.66/2023-C2 against the petitioner grandpa's daughter Nirmala, female, aged 34 years, W/o.Suresh, who is confined at Special Prison for Women, Vellore and set aside the same and direct the respondents to produce the detenue before this Court and set at liberty.

For Petitioner	:	Mr.V.Parthiban for Mr.D.Balaji (in both petitions)
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor (in both petitions)

COMMON ORDER

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

This common order will now govern and dispose of captioned two 'Habeas Corpus Petitions' ('HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity). This Court makes it clear that for the sake of further clarity, 'H.C.P. No.1407 of 2023' shall be referred to as 'I HCP' and 'H.C.P. No.1410 of 2023' shall be referred to as 'II HCP' wherever necessary.



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2. I HCP was listed in the Admission Board on 28.07.2023 and II HCP was listed in the Admission Board on 31.07.2023. The two Admission Board orders read as follows:

I HCP

▪ **H.C.P.No.1407 of 2023**
M.SUNDAR. J.,
AND
R.SAKTHIVEL. J.,

In the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] Mr.V.Paarthiban, learned counsel appearing on behalf of Mr.D.Balaji, counsel on record for the habeas corpus petitioner is before this Court.

2. Learned counsel submits that captioned HCP assails a 'preventive detention order dated 30.06.2023 bearing reference D.O.No.65/2023-C2' [hereinafter 'impugned preventive detention order' for the sake of brevity, convenience and clarity] made by the 'second respondent District Collector' [hereinafter 'Detaining Authority' for the sake of brevity, convenience and clarity]. It is submitted that impugned preventive detention order has been made by the Detaining Authority 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 'Tamil Nadu Act 14 of 1982' for the sake of brevity] branding the detenu as a 'Bootlegger' within the meaning of Section 2(b) of Tamil Nadu Act 14 of 1982. To be noted, spouse of the detenu is the Habeas Corpus Petitioner before us.

3. In the Admission Board, learned counsel Mr.V.Paarthiban, predicated his campaign against the impugned preventive detention order on two points and they are as follows:

(i) Impugned preventive detention order is dated 30.06.2023, the same has been served on the detenu on



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the same day i.e., 30.06.2023. Therefore, the detention of the detenu pursuant to the impugned preventive detention order (within the meaning of Section 8(1) of Tamil Nadu Act 14 of 1982) is also 30.06.2023. Proceedings of the Detaining Authority i.e., proceedings which sets out the grounds /substratum based on which the impugned preventive detention order has been made has also been served on the detenu on 30.06.2023. Learned counsel submits that the impugned preventive detention order is based on one adverse case (occurrence on 22.03.2023) and one ground case (occurrence on 28.05.2023). It is also submitted that in the adverse case bail has already been granted by the Court concerned. However, in the ground case, bail petition has been dismissed. Be that as it may, advertent to the grounds booklet served on the detenu, learned counsel submits that the grounds booklet has been served on the detenu only on 06.07.2023 and the neat argument is, this is a direct infraction of Section 8(1) of Tamil Nadu Act 14 of 1982. It was also pointed out that the expression 'the grounds on which the order has made' occurring in Section 8(1) of Tamil Nadu Act 14 of 1982 has been explained by this Court to include the grounds booklet and that infraction of Section 8(1) of Tamil Nadu Act 14 of 1982 would be a further infraction of constitutional safeguard ingrained in Article 22(5) of Constitution of India;

ii) Placing reliance on **Bhawarlal Ganeshmalji** case [**Bhawarlal Ganeshmalji v. State of Tamil Nadu** reported in (1979) 1 SCC 465] which continues to be a good law as Hon'ble Supreme Court has followed the same 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, learned counsel submitted that 'live and proximate link' between grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 28.05.2023 but the impugned preventive detention order has been made only on 30.06.2023.



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4. In the light of the nature of the argument raised [first point turning on Section 8(1) of Act 14 of 1982] in the admission board and considering the facts and circumstances of the case, we deem it appropriate to issue Rule Nisi returnable in one week. To be noted, we are doing this by resorting to sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' [hereinafter 'MHC Writ Rules' for the sake of convenience] which provides for issue of Rule Nisi returnable earlier if so ordered by the Court. In this regard, we make it clear that we have already referred to Hon'ble Rules Committee for examining the possibility of providing for across the board shorter (returnable date) Rule Nisi notices in Habeas Corpus matters as Habeas Corpus writs have been categorized in a different / separate Sub-Rule basket vide Rule 17(1)(ii) of MHC Writ Rules which provides for listing of HCPs before a Division Bench.

5. Issue Rule Nisi returnable by 07.08.2023. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor accepts notice for all five respondents.

List on 07.08.2023.'

II HCP

H.C.P.No.1410 of 2023

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

In the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] Mr.D.Balaji, learned counsel on record for the habeas corpus petitioner is before this Court.

2. Learned counsel submits that captioned HCP assails a 'preventive detention order dated 30.06.2023 bearing reference D.O.No.66/2023-C2' [hereinafter 'impugned preventive detention order' for the sake of brevity, convenience and clarity] made by the 'second respondent District Collector' [hereinafter 'Detaining Authority' for the sake of brevity, convenience and clarity]. It is submitted that impugned preventive detention order has been made by the Detaining Authority under the 'Tamil Nadu



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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 'Tamil Nadu Act 14 of 1982' for the sake of brevity] branding the detenu as a 'Bootlegger' within the meaning of Section 2(b) of Tamil Nadu Act 14 of 1982. To be noted, spouse of the detenu is the Habeas Corpus Petitioner before us.

3. In the Admission Board, learned counsel Mr.D.Balaji, predicated his campaign against the impugned preventive detention order on two points and they are as follows:

(i) Impugned preventive detention order is dated 30.06.2023, the same has been served on the detenu on the same day i.e., 30.06.2023. Therefore, the detention of the detenu pursuant to the impugned preventive detention order (within the meaning of Section 8(1) of Tamil Nadu Act 14 of 1982) is also 30.06.2023. Proceedings of the Detaining Authority i.e., proceedings which sets out the grounds /substratum based on which the impugned preventive detention order has been made has also been served on the detenu on 30.06.2023. Learned counsel submits that the impugned preventive detention order is based on three adverse cases (occurrences on 09.05.2021, 25.11.2021 and 15.09.2022) and one ground case (occurrence on 28.05.2023). It is also submitted that in the adverse cases bail has already been granted by the Court concerned. However, in the ground case, bail petition has been dismissed. Be that as it may, advertent to the grounds booklet served on the detenu, learned counsel submits that the grounds booklet has been served on the detenu only on 06.07.2023 and the neat argument is, this is a direct infraction of Section 8(1) of Tamil Nadu Act 14 of 1982. It was also pointed out that the expression 'the grounds on which the order has made' occurring in Section 8(1) of Tamil Nadu Act 14 of 1982 has been explained by this Court to include the grounds booklet and that infraction of Section 8(1) of Tamil Nadu Act 14 of 1982 would be a further infraction



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of constitutional safeguard ingrained in Article 22(5) of Constitution of India;

ii) Placing reliance on **Bhawarlal Ganeshmalji** case [**Bhawarlal Ganeshmalji v. State of Tamil Nadu** reported in (1979) 1 SCC 465] which continues to be a good law as Hon'ble Supreme Court has followed the same 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, learned counsel submitted that 'live and proximate link' between grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 28.05.2023 but the impugned preventive detention order has been made only on 30.06.2023.

4. In the light of the nature of the argument raised [first point turning on Section 8(1) of Act 14 of 1982] in the admission board and considering the facts and circumstances of the case, we deem it appropriate to issue Rule Nisi returnable in one week. To be noted, we are doing this by resorting to sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' [hereinafter 'MHC Writ Rules' for the sake of convenience] which provides for issue of Rule Nisi returnable earlier if so ordered by the Court. In this regard, we make it clear that we have already referred to Hon'ble Rules Committee for examining the possibility of providing for across the board shorter (returnable date) Rule Nisi notices in Habeas Corpus matters as Habeas Corpus writs have been categorized in a different / separate Sub-Rule basket vide Rule 17(1)(ii) of MHC Writ Rules which provides for listing of HCPs before a Division Bench.

5. Issue Rule Nisi returnable by 07.08.2023. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor accepts notice for all five respondents.

List on 07.08.2023.'

3. The aforementioned Admission Board orders capture essentials i.e., essentials imperative for appreciating this common



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order and therefore we are not setting out the same. The short facts, abbreviations and short references used in the Admission Board orders will continue to be used in this common order also.

4. Before we proceed further, we deem it appropriate to set out the proceedings made in the further listings (also) qua the two HCPs. Post-admission, I HCP was listed on 07.08.2023, 14.08.2023, 21.08.2023, 22.08.2023 and 23.08.2023 and the orders made in these listings are as follows:

'Proceedings dated 07.08.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing (Admission Board) on 28.07.2023.

2. Mr.V.Paarthiban, learned counsel appearing on behalf of counsel on record for petitioner Mr.D.Balaji and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the five respondents are before us.

3. Mr.V.Paarthiban, learned counsel is ready to advance arguments but learned Prosecutor requests for a short accommodation saying that he needs to get a report from prison authorities, more particularly fourth respondent. Request acceded to.

List one week hence. List on 14.08.2023.'

'Proceedings dated 14.08.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 28.07.2023 and 07.08.2023 which read as follows:



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Proceedings dated 28.07.2023:

'In the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] Mr.V.Paarthiban, learned counsel appearing on behalf of Mr.D.Balaji, counsel on record for the habeas corpus petitioner is before this Court.

2. Learned counsel submits that captioned HCP assails a 'preventive detention order dated 30.06.2023 bearing reference D.O.No.65/2023-C2' [hereinafter 'impugned preventive detention order' for the sake of brevity, convenience and clarity] made by the 'second respondent District Collector' [hereinafter 'Detaining Authority' for the sake of brevity, convenience and clarity]. It is submitted that impugned preventive detention order has been made by the Detaining Authority 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 'Tamil Nadu Act 14 of 1982' for the sake of brevity] branding the detenu as a 'Bootlegger' within the meaning of Section 2(b) of Tamil Nadu Act 14 of 1982. To be noted, spouse of the detenu is the Habeas Corpus Petitioner before us.

3. In the Admission Board, learned counsel Mr.V.Paarthiban, predicated his campaign against the impugned preventive detention order on two points and they are as follows:

(i) Impugned preventive detention order is dated 30.06.2023, the same has been served on the detenu on the same day i.e., 30.06.2023. Therefore, the detention of the detenu pursuant to the impugned preventive detention order (within the meaning of Section 8(1) of Tamil Nadu Act 14 of 1982) is also 30.06.2023. Proceedings of the Detaining Authority i.e., proceedings which sets out the grounds / substratum based on which the impugned preventive detention order has been made has also been served on the detenu on 30.06.2023. Learned counsel submits that the impugned preventive detention order is based on one adverse case (occurrence



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on 22.03.2023) and one ground case (occurrence on 28.05.2023). It is also submitted that in the adverse case bail has already been granted by the Court concerned. However, in the ground case, bail petition has been dismissed. Be that as it may, advertent to the grounds booklet served on the detenu, learned counsel submits that the grounds booklet has been served on the detenu only on 06.07.2023 and the neat argument is, this is a direct infraction of Section 8(1) of Tamil Nadu Act 14 of 1982. It was also pointed out that the expression 'the grounds on which the order has made' occurring in Section 8(1) of Tamil Nadu Act 14 of 1982 has been explained by this Court to include the grounds booklet and that infraction of Section 8(1) of Tamil Nadu Act 14 of 1982 would be a further infraction of constitutional safeguard ingrained in Article 22(5) of Constitution of India;

ii) Placing reliance on **Bhawarlal Ganeshmalji** case [**Bhawarlal Ganeshmalji v. State of Tamil Nadu** reported in **(1979) 1 SCC 465**] which continues to be a good law as Hon'ble Supreme Court has followed the same 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**, learned counsel submitted that 'live and proximate link' between grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 28.05.2023 but the impugned preventive detention order has been made only on 30.06.2023.

4. In the light of the nature of the argument raised [first point turning on Section 8(1) of Act 14 of 1982] in the admission board and considering the facts and circumstances of the case, we deem it appropriate to issue Rule Nisi returnable in one week. To be noted, we are doing this by resorting to sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' [hereinafter 'MHC Writ Rules' for the sake of convenience] which provides for issue of Rule Nisi returnable earlier if so ordered by the Court. In this regard, we make it clear that we have already referred to Hon'ble Rules Committee for examining the possibility of providing for across the board shorter



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(returnable date) Rule Nisi notices in Habeas Corpus matters as Habeas Corpus writs have been categorized in a different / separate Sub- Rule basket vide Rule 17(1)(ii) of MHC Writ Rules which provides for listing of HCPs before a Division Bench.

5. Issue Rule Nisi returnable by 07.08.2023. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor accepts notice for all five respondents.

List on 07.08.2023.'

Proceedings dated 07.08.2023:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing (Admission Board) on 28.07.2023.

2. Mr.V.Paarthiban, learned counsel appearing on behalf of counsel on record for petitioner Mr.D.Balaji and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the five respondents are before us.

3. Mr.V.Paarthiban, learned counsel is ready to advance arguments but learned Prosecutor requests for a short accommodation saying that he needs to get a report from prison authorities, more particularly fourth respondent. Request acceded to.

List one week hence. List on 14.08.2023.'

2. Captioned matter inter alia turns on Section 8(1) of Act 14 of 1982. The expression 'the grounds on which the order has made' occurring in Section 8(1) of Act 14 of 1982 was explained by this Court to include the grounds and grounds booklet containing the material.

3. Both sides request for a short accommodation to locate that case law and come before this Court. Common request acceded to.

4. List one week hence. List on 21.08.2023.'

'Proceedings dated 21.08.2023

Re-notified.

List on 22.08.2023 in the Additional List.'



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'Proceedings dated 22.08.2023

*Re-notified.
List on 23.08.2023.'*

'Proceedings dated 23.08.2023

*Re-notified.
List on 29.08.2023'*

5. The II HCP post-admission was listed on 07.08.2023, 14.08.2023, 21.08.2023, 22.08.2023 and 23.08.2023 and the orders made on these listings are as follows:

'Proceedings dated 07.08.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing (Admission Board) on 31.07.2023.

2. Mr.V.Paarthiban, learned counsel appearing on behalf of counsel on record for petitioner Mr.D.Balaji and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the five respondents are before us.

3. Mr.V.Paarthiban, learned counsel is ready to advance arguments but learned Prosecutor requests for a short accommodation saying that he needs to get a report from prison authorities, more particularly fourth respondent. Request acceded to.

List one week hence. List on 14.08.2023.'

'Proceedings dated 14.08.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 31.07.2023 and 07.08.2023 which read as follows:

Proceedings dated 31.07.2023:



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'In the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] Mr.D.Balaji, learned counsel on record for the habeas corpus petitioner is before this Court.

2. Learned counsel submits that captioned HCP assails a 'preventive detention order dated 30.06.2023 bearing reference D.O.No.66/2023-C2' [hereinafter 'impugned preventive detention order' for the sake of brevity, convenience and clarity] made by the 'second respondent District Collector' [hereinafter 'Detaining Authority' for the sake of brevity, convenience and clarity]. It is submitted that impugned preventive detention order has been made by the Detaining Authority 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 'Tamil Nadu Act 14 of 1982' for the sake of brevity] branding the detainee as a 'Bootlegger' within the meaning of Section 2(b) of Tamil Nadu Act 14 of 1982. To be noted, spouse of the detainee is the Habeas Corpus Petitioner before us.

3. In the Admission Board, learned counsel Mr.D.Balaji, predicated his campaign against the impugned preventive detention order on two points and they are as follows:

(i) Impugned preventive detention order is dated 30.06.2023, the same has been served on the detainee on the same day i.e., 30.06.2023. Therefore, the detention of the detainee pursuant to the impugned preventive detention order (within the meaning of Section 8(1) of Tamil Nadu Act 14 of 1982) is also 30.06.2023. Proceedings of the Detaining Authority i.e., proceedings which sets out the grounds / substratum based on which the impugned preventive detention order has been made has also been served on the detainee on 30.06.2023. Learned counsel submits that the impugned preventive detention order is based on three adverse cases (occurrences on 09.05.2021, 25.11.2021 and 15.09.2022)



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and one ground case (occurrence on 28.05.2023). It is also submitted that in the adverse cases bail has already been granted by the Court concerned. However, in the ground case, bail petition has been dismissed. Be that as it may, advertent to the grounds booklet served on the detainee, learned counsel submits that the grounds booklet has been served on the detainee only on 06.07.2023 and the neat argument is, this is a direct infraction of Section 8(1) of Tamil Nadu Act 14 of 1982. It was also pointed out that the expression 'the grounds on which the order has made' occurring in Section 8(1) of Tamil Nadu Act 14 of 1982 has been explained by this Court to include the grounds booklet and that infraction of Section 8(1) of Tamil Nadu Act 14 of 1982 would be a further infraction of constitutional safeguard ingrained in Article 22(5) of Constitution of India;

ii) Placing reliance on **Bhawarlal Ganeshmalji** case [**Bhawarlal Ganeshmalji v. State of Tamil Nadu** reported in **(1979) 1 SCC 465**] which continues to be a good law as Hon'ble Supreme Court has followed the same 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**, learned counsel submitted that 'live and proximate link' between grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 28.05.2023 but the impugned preventive detention order has been made only on 30.06.2023.

4. In the light of the nature of the argument raised [first point turning on Section 8(1) of Act 14 of 1982] in the admission board and considering the facts and circumstances of the case, we deem it appropriate to issue Rule Nisi returnable in one week. To be noted, we are doing this by resorting to sub-rule (3) of Rule 19 of 'Madras High Court Writ Rules, 2021' [hereinafter 'MHC Writ Rules' for the sake of convenience] which provides for issue of Rule Nisi returnable earlier if so ordered by the Court. In this regard, we make it clear that we have already referred to Hon'ble Rules Committee for examining the possibility of providing for across the board shorter



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(returnable date) Rule Nisi notices in Habeas Corpus matters as Habeas Corpus writs have been categorized in a different / separate Sub- Rule basket vide Rule 17(1)(ii) of MHC Writ Rules which provides for listing of HCPs before a Division Bench.

5. Issue Rule Nisi returnable by 07.08.2023. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor accepts notice for all five respondents. List on 07.08.2023.'

Proceedings dated 07.08.2023:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing (Admission Board) on 31.07.2023.

2. Mr.V.Paarthiban, learned counsel appearing on behalf of counsel on record for petitioner Mr.D.Balaji and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the five respondents are before us.

3. Mr.V.Paarthiban, learned counsel is ready to advance arguments but learned Prosecutor requests for a short accommodation saying that he needs to get a report from prison authorities, more particularly fourth respondent. Request acceded to.

List one week hence. List on 14.08.2023.'

2. Captioned matter inter alia turns on Section 8(1) of Act 14 of 1982. The expression 'the grounds on which the order has made' occurring in Section 8(1) of Act 14 of 1982 was explained by this Court to include the grounds and grounds booklet containing the material.

3. Both sides request for a short accommodation to locate that case law and come before this Court. Common request acceded to.

4. List one week hence. List on 21.08.2023.'



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'Proceedings dated 21.08.2023

Re-notified.

List on 22.08.2023 in the Additional List.'

'Proceedings dated 22.08.2023

Re-notified.

List on 23.08.2023.'

'Proceedings dated 23.08.2023

Re-notified.

List on 29.08.2023'

6. As would be evident from the Admission Board orders, at the time of admission, Mr.V.Paarthiban, learned counsel appearing on behalf of Mr.D.Balaji, learned counsel on record for petitioners in both the captioned HCPs posited his challenge qua impugned preventive detention orders on two points. One point turns on Section 8(1) of Act 14 of 1982 and another point turns on *Banik* principle i.e., live and proximate link between the grounds of detention and purpose of detention having snapped, however, today in the final hearing board, learned counsel predicated his campaign against the impugned preventive detention orders on one point and that one point is the first point turning on Section 8(1) of Act 14 of 1982.

7. As the submissions of learned counsel on Section 8(1) of Act



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14 of 1982 have been captured in the earlier proceedings, it will suffice to say that learned counsel reiterated the aforementioned submissions.

8. In response to the aforementioned submission turning on Section 8(1) of Act 14 of 1982, Mr.E.Raj Thilak, learned State Additional Public Prosecutor submitted to the contrary. Learned Prosecutor submitted that there is only one day delay and therefore the infraction of Section 8(1) of Act 14 of 1982 is not very serious.

9. We carefully considered the rival submissions. We also perused the case file before us besides the records which were placed before us. This Bench is convinced that the impugned preventive detention orders have been vitiated owing to violation of Section 8(1) of Act 14 of 1982 and both the impugned preventive orders deserve to be dislodged i.e., interfered with and set aside. The discussion, dispositive reasoning i.e., reasons are as follows:

9.1 This Court in ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in ***2023/MHC/193 (Neutral Citation) (SCC Online equivalent is 2023 SCC OnLine 289)*** held that violation of Section 8(1) of Act 14 of 1982 vitiates a preventive detention order and renders it liable for being set aside as



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violation of Section 8(1) of Act 14 of 1982 impairs the right of a detenu to make an effective representation against the preventive detention order as effective representation includes quick representation as detenu is incarcerated and it is a matter of sanctus liberty ingrained in Article 21 of the Constitution. This was posited on the logic that a right of the detenu to make an effective representation against a preventive detention order is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India. This *Shylaja* principle continues to hold the field. Therefore, violation of Section 8(1) of Act 14 of 1982 would result in dislodgement of preventive detention order.

9.2 In the case on hand, the impugned preventive detention orders are dated 30.06.2023. The impugned preventive detention orders and the grounds of impugned preventive detention orders have been served on the detenus on the same day i.e., 30.06.2023. This means that detention of the respective detenus pursuant to the respective impugned preventive detention orders is on 30.06.2023. Therefore, five days qua Section 8(1) of Act 14 of 1982 has to be computed on and from 30.06.2023. In this regard, we make it clear that the language in which Section 8(1) of Act 14 of 1982 is couched



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talks about communicating to the detenu the grounds on which preventive detention order has been made as soon as may be but ordinarily not later than five days and this five days is from the 'date of detention pursuant to the preventive detention order'. In this regard, the scheme of Act 14 of 1982 is such that a preventive detention order under the statute can be made either against a person who is already incarcerated i.e., in prison or who is a free citizen. This is evident from Section 4 which makes it clear that a preventive detention order may be executed at any place in a State in a manner provided for execution of warrant of arrest under Code of Criminal Procedure, 1973 (Central Act 2 of 1974). In the case on hand, the detenus were already incarcerated. Therefore, it is case of formal arrest as Section 8(1) of Act 14 of 1982 talks about 'detention in pursuance of a detention order'. This means that the date on which the preventive detention order is served on the detenu is the date on which the formal arrest in pursuance of the preventive detention order is made. In this case, it is 30.06.2023.

9.3 The next question that arises is for computing five days, whether the date of communication/service of the preventive detention



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order on the detenu should also be included or as to whether it should be excluded. We find that this is a matter of curtailment of liberty. We draw inspiration from the manner in which Hon'ble Supreme Court answered a reference in ***Kapil Wadhawan's*** case being ***Enforcement Directorate, Government of India vs. Kapil Wadhawan and another*** reported in **2023 SCC OnLine SC 972**. We are acutely conscious that *Kapil Wadhawan's* case pertains to remand and as to whether the date of remand should also be taken into account for a default bail legal drill under Section 167(2) Cr.P.C. It was a reference before the Hon'ble Larger Bench, however, as that is also a matter of curtailment of liberty (as in the case on hand), we draw inspiration from *Kapil Wadhawan* principle and hold that while computing five days within the meaning of Section 8(1) of Act 14 of 1982, the date on which the preventive detention order is served on the detenu i.e., formal arrest pursuant to the preventive detention order should also be included. We add that in *Kapil Wadhawan's* case, while dealing with default bail, that was a case where there was a trial but we are dealing with a preventive detention order where there is no trial. Therefore, we are of the considered view that *Kapil Wadhawan* principle would apply with greater force i.e., all fours to a preventive



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detention case. We remind ourselves that preventive detention is not a punishment and that habeas corpus petition is a high prerogative writ. It is in this view of the matter, we are engrafting *Kapil Wadhawan* principle into habeas legal drill (qua preventive detention orders) which is now on hand.

9.4 Now that we have made it clear that five days should be computed by including the date on which the preventive detention order is served on the detenu, the next question is whether the expression that '*grounds on which the order has been made*' occurring in Section 8(1) of Act 14 of 1982 would mean the grounds of preventive detention order or would it include the grounds booklet also which contains the documents which form the basis of grounds of preventive detention order and ultimately the preventive detention order itself is made. Though the plain language of Section 8(1) of Act 14 of 1982 talks about grounds, we have no hesitation in saying that the expression '*grounds on which the order has been made*' occurring in Section 8(1) of Act 14 of 1982 will include the grounds booklet which contains the documents which constitute the substratum or the basis on which the grounds of preventive detention order has been made as the whole objective behind Section 8(1) of Act 14 of 1982, is



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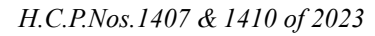
the detenu should be given an opportunity to make a representation nay effective representation (in quick time as alluded to supra) against a preventive detention order. This right of a detenu to make an effective representation against a preventive detention order is a very sacrosanct and sanctus constitutional right and such constitutional safeguard is ingrained in Article 22(5) of the Constitution of India. This constitutional philosophy ingrained in Article 22(5) of the Constitution of India in the light of Section 8(1) of Act 14 of 1982 has been elaborately set out by this Court in *Gomathi's* case {***Gomathi Vs. Principal Secretary to Government and others*** reported in **2023/MHC/334 (Neutral Citation)**}. To be noted, *Gomathi's* case is order dated 25.01.2023 in H.C.P. No.1388 of 2023.

9.5 A careful perusal of *Gomathi's* case as well as another order in *Parimala's* case (***H.Parimala Vs. State rep. By Additional Secretary to Government and Others***) made a day prior i.e., 24.01.2023 being a common order in H.C.P. Nos.1242, 1248 and 1320 of 2022 will make it clear that this Court has held that five days set out in Section 8(1) of Act 14 of 1982 is a numeric expression or in other words a quantitative expression of the constitutional philosophy ingrained in Article 22(5) of the Constitution of India. As regards five



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days, we are of the view that the rigour has to be more. The reasons are two fold. One is statutory and the other is constitutional. The statutory reason is contained in Section 8(1) of Act 14 of 1982. Section 8(1) of Act 14 of 1982 itself makes it clear that it is not just a question of five days but it is 'as soon as may be'. This means that statutorily five days is the outer limit and not a leeway given. The constitutional reason or logic is, vide Article 22(5) of the Constitution of India (as already alluded to supra) when liberty is deprived without trial it is imperative that the detenu is given earliest opportunity to make an effective representation against such detention. This is clear from the scheme of Act 14 of 1982 wherein and whereby only three authorities have been vested with power to make detention orders and they are Commissioner of Police, Collector of District (Executive Magistrate) and State. When the detention order is made by the Commissioner of Police or Collector of District (Executive Magistrate of the District) it would have a shelf life of only 12 days subject to confirmation by the Advisory Board whereas only if it is made by the State it would have a longer shelf life of three months but this is also subject to authorisation by the Advisory Board and in event 12 months is the cap. In this regard, at the risk of repetition, we remind



10. From the narrative thus far, it is clear that we have set out the reckoning date for computing five days i.e., reckoning date being the date on which formal arrest is made in cases where the detenu is already incarcerated. In cases where the detenu is not already incarcerated, it does not present a problem as it will be the date of arrest pursuant to preventive detention order. We have also set out the manner in which five days has to be computed. We have also now set out that the reckoning of five days has to be applied with all force and the reasons have been delineated supra.

11. Numeric expression does not mean that the party concerned will have the benefit of waiting till the 11th hour nay 59th minute of 11th hour and take recourse to statutory compliance. After all the knife has to fall somewhere when it comes to quantitative or numeric statutory expressions. In any case, in Section 8(1) of Act 14 of 1982, the expression '*as soon as may be*' has been used and that according to us makes it clear that five days is not leeway and an outer limit beyond which there can be no tolerance.



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12. This takes us to the last question as to whether the expression 'the grounds on which the order has been made' according to Section 8(1) of Act 14 of 1982 would include the grounds booklet also. As already alluded to supra, we are of the view that absent grounds booklet which contains the documents on the basis of which grounds of preventive detention order has been made, the detenu will be at a disadvantage when it comes to making a representation. The detenu after all has a right to make an effective representation. In this regard, we deem it appropriate to say that this aspect of the matter came up for consideration before Hon'ble Supreme Court in **Smt. Shalini Soni Etc vs Union Of India & Ors. Etc** way back in 1980. *Shalini Soni* is reported in **AIR 1981 SC 431**. *Shalini Soni's* case also pertains to preventive detention and therefore the principle therein would apply in all fours. The most relevant paragraph in *Shalini Soni* case is paragraph 7 and the same reads as follows:

'7. The Article has two facets: (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation



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of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must



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reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second fact of Art. 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is clear that "grounds" in Art. 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'.' (underlining made by this court for ease of reference and for supplying emphasis)

13. Post *Shalini Soni*, a Hon'ble Division Bench of this Court in ***Malleeswari Vs. State Government, rep. By the Secretary to Government and another*** reported in **(2011) 1 MLJ (CrI) 513** held that



grounds of detention will include connected papers. This is articulated in *Malleeswari's* case (incidentally it is paragraph 7 in *Malleeswari's* case also) and the same reads as follows:

'7. It is not in controversy that the order of detention came to be set aside on the grounds recorded above. As rightly pointed out by the learned counsel for the petitioner, though the impugned detention order came to be passed on 02.03.2010, a copy of the same and the grounds of detention and connected papers were supplied to the detenu only on 09.03.2010. From a reading of the detention order and grounds, it is quite clear that the copies of the adverse cases and the ground case, were to be supplied to the detenu not exceeding five days from the date of the order of detention. In the present case on hand, though the impugned detention order was passed on 02.03.2010, it was supplied to him only on 09.03.2010, which is violative of the mandatory provision.'

14. Thereafter, another Hon'ble Division Bench of this Court in *Mageswari's* case (***Mageswari Vs. The Government of Tamil Nadu*** reported in **2011(1) MWN (Cr.) 599(DB)**) wherein preventive detention more particularly preventive detention under Act 14 of 1982 went into this very question. In *Mageswari's* case, Hon'ble Division



Bench noticed that Section 8(1) of Act 14 of 1982 does not refer to supply of copies of the documents along with the grounds of detention and it simply refers to communication to the detenu of the grounds on which the order of detention has been made but it was super added and made clear that it is imperative that the supply of copies of material relied on along with the grounds is imperative. Incidentally, in *Mageswari's* case also, articulation with clarity and specificity is in paragraph 7 and paragraph 7 thereat reads as follows:

'7. Of course, the language of Section 8(1) does not refer to the supply of copies of the documents along with the grounds of detention. It simply refers to the communication to the detenu of the grounds on which the order of detention has been made. But, however, it was superadded with the rider specifying the purpose for which the grounds are to be communicated. The purpose enshrined therein is to afford the detenu the earliest opportunity of making an effective representation against the order of detention to the Government. The mere supply of the ground of detention unaccompanied by copies of the materials relied on the Detaining Authority, is of no use for the purpose of making an effective representation, at the earliest opportunity, against the order of detention. Therefore, we are of the view that the supply of copies of materials relied on along with the grounds of detention is



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also the requirement of the said provision to enable the detenu to make an effective representation at the earliest point of time. In other words, the supply of ground of detention as contemplated in Section 8(1) will include the supply of the copies of the relied on documents also and this view will also be strengthened by the fact that the abstract order of detention could not have been passed even before preparing the grounds of detention stating the reasons.'

15. This Bench is informed that *Mageswari's* case, explaining that the grounds would include the copies of documents i.e., the 'grounds booklet' to put it in ease of language / expression in vogue in the heabus Bar , is governing the field and the same has stood the test of time.

16. Learned Prosecutor drew our attention to an order in ***Velammal's* case (Velammal Vs. State of of Tamil Nadu)** reported in **2023 1 LW (Crl.) 580** wherein another co-ordinate Hon'ble Division Bench has taken a view by resorting to Section 9 of The General Clauses Act, 1897, that the date on which the detention order has been served on the detenu should be excluded for computing five days. There are two points qua this aspect of the matter. A careful perusal of *Velammal's* case brings to light that *Velammal's* case was



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rendered by the other Hon'ble Co-ordinate Bench before *Kapil Wadhawan*. *Kapil Wadhawan* reference was answered by a three member Hon'ble Bench of Hon'ble Supreme Court on 27.03.2023 reported in 2023 SCC Online SC 972 whereas *Velammal's case* was rendered by the other Co-ordinate Bench on 15.03.2023. We respectfully and deferentially follow *Kapil Wadhawan* principle. As already alluded to supra, we are acutely conscious that *Kapil Wadhawan* pertains to remand whereas we are on a habeas drill pertaining to a preventive detention order but both pertain to curtailment of liberty and in preventive detention, it is curtailment of liberty without trial. Therefore, the principle applies in all fours is our considered view and this has impelled us to engraft *Kapil Wadhawan* view regarding remand in preventive detention jurisprudence also.

17. In the light of the discussion thus far, the submission of learned Prosecutor that it is only one day delay cannot be countenanced. The reasons are two fold. One is, it is two days and second is, even if it is one day the rigour is very high for reasons alluded to supra.



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18. There is one more perception of looking at *Velammal's case* in the case on hand. In the case on hand, the reckoning date is 30.06.2023 and the date of service of grounds booklet is 06.07.2023. Even if 30.06.2023 is excluded, 06.07.2023 is beyond five days and therefore it may really not be necessary to go into a legal drill regarding *Velammal's case* and as to whether *Velammal's case* having been rendered before *Kapil Wadhawan* makes a difference. Therefore, we leave that question open for another matter where there is a contestation so that if necessary, a reference can be made.

19. We have no hesitation in concluding both the impugned preventive detention orders deserve to be dislodged.

19.1 Ergo, the sequitur is, captioned I HCP is allowed. Impugned preventive detention order dated 30.06.2023 bearing reference D.O.No.65/2023-C2 made by the second respondent is set aside and the detenu Thiru.Viji @ Vijayakumar, aged 39 years, Son of Thiru.Sivananantham, 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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19.2 Apropos, the sequitur is, captioned II HCP is allowed. Impugned preventive detention order dated 30.06.2023 bearing reference D.O.No.66/2023-C2 made by the second respondent is set aside and the detenue Tmt.Nirmala, aged 34 years, Wife of Thiru.Suresh, 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.)
29.08.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

**P.S: Registry to forthwith communicate this order to Jail authorities in
(i) Central Prison, Vellore and
(ii) Special Prison for Women, Vellore.**

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,

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Central Prison, Vellore – 2.

5.The Superintendent of Prison,
Special Prison for Women, Vellore.

6.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.

7.The Public Prosecutor,
High Court, Madras.



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H.C.P.Nos.1407 & 1410 of 2023

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

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29.08.2023

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