



WEB COPY



H.C.P.No.1596 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1596 of 2022

P.Prakash
S/o.Late Pandian

.. Petitioner

Vs.

1. The Secretary to Government
Home Prohibition & Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Greater Chenani
Vepery, Chennai-600 007.
3. The Additional Superintendent of Police
Central Prison-II, Puzhal
Chennai.
4. The Inspector of Police
EDF-II, Team III
Central Crime Branch
Egmore, Chennai-600 008.

Page Nos.1/13



H.C.P.No.1596 of 2022

WEB COPY

5. The Inspector of Police
EDF-I, Team II
Central Crime Branch
Egmore, Chennai-600 008.

.. 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 connection with detention order passed by the 2nd respondent dated 09.07.2022 in BCDFGISSSV No.193 of 2022 against the petitioner / detenu father's son namely, Gokulnath, son of P.Prakash, aged about 24 years, who is confined in Central Prison-II, Puzhal, Chennai and set him at liberty.

For Petitioner	:	Mr.C.Mohan Raj representing Mr.S.Jeyachandran
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

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 father of detenu assailing a 'preventive detention order dated 09.07.2022 bearing reference No.193/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent



H.C.P.No.1596 of 2022

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 is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.112 of 2022 on the file of Central Crime Branch, Chennai, for alleged offences under Sections 406, 420, 465, 467, 468, 471 and 120(B) read with Section 34 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 impugned detention order, it is not necessary to delve into the factual matrix



H.C.P.No.1596 of 2022

or be detained further by facts.

WEB COPY

4. Mr.C.Mohan Raj, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr. Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. We are informed that the preventive detention orders were clamped on co-accused in the ground case, co-accused challenged the preventive detention orders in various HCPs and all HCPs have been allowed by this Hon'ble Division Bench. The details are as follows:

<i>S.No.</i>	<i>Detenu's Name</i>	<i>HCP No.</i>	<i>order date</i>
1.	Ponraj	1509 of 2022	10.01.2023
2.	Ponraghu	2003 of 2022	23.02.2023
3.	Ponravi	1935 of 2022	27.02.2023
4.	Titus Samuel	1488 of 2022	07.03.2023
5.	David	1510 of 2022	10.01.2023
6.	Vinoth @ Vetrimaran	1486 of 2022	07.03.2023



H.C.P.No.1596 of 2022

6. We are informed without any disputation or disagreement that the points raised by the co-accused in the aforementioned HCPs are available to the detenu in the captioned HCP also. We, therefore deem it appropriate to scan and reproduce one of the orders in aforementioned HCPs i.e., order dated 23.02.2023 in HCP.No.2003 of 2022. A scanned reproduction of the order dated 23.02.2023 in HCP No.2003 of 2022 is as follows:



WEB COPY



H.C.P.No.1596 of 2022

	
WEB COPY	தமிழக அரசு
IN THE HIGH COURT OF JUDICATURE AT MADRAS	
DATED: 25.03.2023	
CORAM	
THE HONOURABLE MR.JUSTICE M.SUNDAR	
and	
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR	
<u>H.C.P.No.2004 of 2022</u>	
Kalpavadevi W/o.Guzavel	.. Petitioner
Vs.	
1. The State rep. By The Secretary to Government of Tamil Nadu Home, Prohibition and Excise Secretariat Chennai - 600 009	
2. The Commissioner of Police Greater Chennai Vepery, Chennai - 600 007	
3. The Superintendent of Prison Central Prison Puduch, Chennai	
4. The Inspector of Police EDF II, T-37 Central Crime Branch Vepery Chennai - 600 007	Respondents
Page Nos.18	
https://www.mhc.tn.gov.in/	



WEB COPY



H.C.P.No.1596 of 2022



JICP No.2003 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the detenu Thiru.Pon Raghun, male aged 30 years son of Gunavel, residing at 47, 11-4, Nanthagopulapuram East, Mettur, Tiruvarur - 628 002 now confined in Central Prison, Puzhal, Chennai as per the order of the prevention detention passed by the second respondent under Act 14 of 1982 before this Court and call for the records pertaining to the detention order of the second respondent in Memo No.264/BCDFGISSSV/2022 dated 30.08.2022 and quash the same and set the detenu at liberty.

For Petitioner : Ms.R.Subadra Devi
for Mr.G.Pugazhenthir

For Respondents : Mr.R.Muniyappan
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [JICP for the sake of brevity] has been filed by the mother of the detenu assailing a 'detention order dated 30.08.2022 bearing reference No.264/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'second respondent' [hereinafter 'Detaining Authority' for the sake of brevity and convenience].

Page Nos.2/8

<https://www.mhc.tn.gov.in/judis>



H.C.P.No.1596 of 2022

WEB COPY



H.C.P.No.2007 of 2022

2. In and by the impugned detention order, the detenu has been detained branding him as a 'Goonda' within the meaning of Section 3(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].

3.Ms.Subadra Devi, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all the four respondents are before us.

4. Notwithstanding very many averments in the support affidavit, learned counsel predicated her campaign against the impugned detention order on two points before us and they are as follows:

- i) The detenu's bail application in the ground case being Cr.I.M.P.No.24276 of 2022 was dismissed by the Special Metropolitan Magistrate for exclusive trial of CCB Cases

Page Nos.3/8

<https://www.mhc.tn.gov.in/judis>



WEB COPY



H.C.P.No.1596 of 2022



HCP No.2603 of 2022

(relating to cheating cases in Chennai) and CB CID Metro cases, Chennai in and by an order dated 29.08.2022 but the detention order says that the date of dismissal is 26.08.2022;

ii) A case which has been relied upon in the impugned detention order being Crime No.180 of 2019 under Sections 406, 420, 465, 467, 468, 471 & 506(i) of Indian Penal Code, 1860 (Act 45 of 1860) [IPC for brevity] wherein bail was granted by Special Metropolitan Magistrate for the exclusive trial of CCB Cases (relating to cheating cases in Chennai) and CB CID Metro cases, Chennai for arriving at subjective satisfaction and imminent possibility of being enlarged on bail but this case is really not similar to ground case as it is not one including Sections 506(i), 34 and 120B IPC offences.

5. In response to the above, Learned Additional Public Prosecutor made submissions, which are as follows:

i) As regards the bail petition, the number has been correctly given and therefore, it is an inadvertent typographical error;

Page Nos 4/8

[For www.mhc.tn.gov.in/judis](https://www.mhc.tn.gov.in/judis)



WEB COPY



H.C.P.No.1596 of 2022



WEB COPY



HCP No.1007 of 2022

ii) As regards the similar case and the ground case several

offences are broadly similar.

6. We carefully considered the rival contentions.

7. As regards both the points, it is not a question of whether it is a typographical error or broadly comparable. The reason is, the Detaining Authority has arrived at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. Therefore, this is very crucial. If Detaining Authority were to arrive at the subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail that should be based on material that is strong and comparable. In the case on hand, as regards the bail application of the detenu in the ground case, the date has been misread and as regards the similar case, we find that it would be a matter of comparing Apples and Oranges or to put it differently comparing chalk and cheese.

8. Therefore, the point is, subjective satisfaction of the Detaining Authority in arriving at the conclusion that there is imminent possibility of the detenu being enlarged on bail, which is one of the vital determinants qua

Page Nos.5/8

உயர் நீதிமன்றம், சென்னை



WEB COPY



H.C.P.No.1596 of 2022



HCP No.2093 of 2022

impugned detention order is unpaired. The sequitur is, it warrants inference in the impugned detention order.

9. Ergo, impugned detention order dated 30.08.2022 bearing reference No.264/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr. Pon Raghu, male, aged 30 years, son of Mr. Gunavel, who is confined at Central Prison Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCP ordered on above terms.

(M.S.,J.) (M.N.K.,J.)
23.02.2023
(1/5)

Neutral Citation : Yes

gpa

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

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.07.2022 bearing reference No.193/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Gokulnath @ Praveen, son of Thiru.Prakash, aged about



H.C.P.No.1596 of 2022

24 years, 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.)

(M.N.K.,J.)

08.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

To

1. The Secretary to Government
Home Prohibition & Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Greater Chenani
Vepery, Chennai-600 007.
3. The Additional Superintendent of Police
Central Prison-II, Puzhal, Chennai.
4. The Inspector of Police
EDF-II, Team III, Central Crime Branch
Egmore, Chennai-600 008.
5. The Inspector of Police
EDF-I, Team II, Central Crime Branch
Egmore, Chennai-600 008.
6. The Public Prosecutor
High Court, Madras.

Page Nos.12/13



WEB COPY



H.C.P.No.1596 of 2022

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

mk

H.C.P.No.1596 of 2022

08.03.2023

Page Nos.13/13