



H.C.P.No.2168 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2168 of 2022

Uthirakumar

S/o.Radhakrishnan

.. Petitioner/cousin brother of Detenu

Vs.

1.State of Tamil Nadu,
Rep by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Chennai District.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai District.

4.The Inspector of Police (L & O),
K-8, Arumbakkam Police Station,
Chennai District.

.. 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 relating to the



H.C.P.No.2168 of 2022

detention order vide Memo No.329/BCDFGISSSV/2022 dated 20.09.2022 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's cousin brother, namely, Senthilkumaran, Son of Sundaravadivel, aged 38 years (who is presently undergoing detention in Central Prison, Puzhal, Chennai) before this Court and set him at liberty.

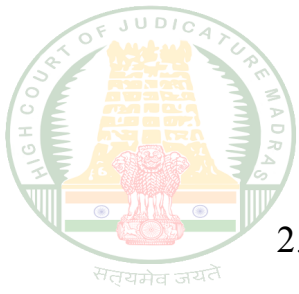
For Petitioner : Mr.A.P.Sathyamurthy

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 cousin brother of detenu assailing a 'preventive detention order dated 20.09.2022 bearing reference 329/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 is the detaining authority as impugned detention order has been made by second respondent.



H.C.P.No.2168 of 2022

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 no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.297 of 2022 on the file of K-8 Arumbakkam Police Station for alleged offences under Sections 342, 397 read with 120(B) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Sections 342, 395, 397 and 412 of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.A.P.Sathyamurthy, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.



H.C.P.No.2168 of 2022

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5. We are informed that co-accused in the ground case (Balaji) was clamped with similar preventive detention order, the same was challenged before this Court vide H.C.P.No.2060 of 2022 and HCP was allowed by an order dated 11.04.2023 made by this Court, which reads as follows:



H.C.P.No.2060 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2060 of 2022

Suriya

.. Petitioner

Vs

- 1.State of Tamil Nadu,
Rep. by The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai 600 066.
- 4.The Assistant Commissioner of Police,
Arumbakkam Range, Anna Nagar District,
Chennai 600 106.
- 5.The Inspector of Police,
K-8 Arumbakkam Police Station, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus calling for the records

Page Nos.1/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

relating to the detention order in Memo No.327/BCDFGISSSV/2022, dated 20.09.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Balaji, aged about 28 years, Son of Veeraraghavan, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel for
Mr.R.Krishnan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 detenu assailing a 'preventive detention order dated 20.09.2022 bearing reference No.327/BCDFGISSSV/2022' [hereinafter 'impugned 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 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

Page Nos.2/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

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. The ground case which is the sole substratum of the impugned detention order is Crime No.297 of 2022 on the file of K-8 Arumbakkam Police Station for alleged offences under Sections 342, 397 r/w 120(B) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 342, 395, 397 and 412 of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, learned counsel representing counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all respondents

Page Nos.3/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

are before us.

5. In the support affidavit qua captioned HCP, several grounds have been urged/raised but in the hearing one point that was projected in petitioner's campaign against the impugned preventive detention order has weighed with this Court and therefore we shall set out our discussion and dispositive reasoning on the same. Attention of this Court was drawn to one portion of paragraph 2 and the same reads as follows:

'After the police custody, on 22.08.2022, the Inspector of Police produced again the accused Thiru.Balaji and Thiru.Santhoshkumar before the Court of learned Vth Metropolitan Magistrate, Egmore, Chennai - 8 and they were remanded to judicial custody. Further, their remand period was extended till 26.09.2022.'

6. Adverting to aforesaid paragraph in the impugned preventive detention order, learned counsel for petitioner submitted that the date of arrest is 15.08.2022, the detenu was remanded to judicial custody till 29.08.2022 but in the interregnum on 16.08.2022, the prosecution sought police custody (page no.409 of the grounds

Page Nos.4/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

booklet) and police custody was granted from 17.08.2022 to 22.08.2022. The aforementioned paragraph proceeds on the basis that post police custody, the detenu was produced before the jurisdictional Magistrate and the remand was extended till 26.09.2022 but the grounds booklet does not contain any document to support this averment. In response to this, learned State Additional Public Prosecutor on instructions from the sponsoring authority placed before us an order dated 17.08.2022 made by the jurisdictional Magistrate. This order is grant of police custody of the detenu from 17.08.2022 to 22.08.2022 but what happened on 22.08.2022 is not supported by any document whereas the impugned preventive detention order says that the remand was extended till 26.09.2022. Learned counsel took us through pages 381 and 389 of the grounds booklet and relevant portions thereof read as follows:

'Page No.381

REMAND ORDER DATED 18.08.2022

OF V METROPOLITAN MAGISTRATE COURT

Three accused are produced before me at my residence. Grounds of the case explained. No complaints against police. Free legal aid informed. There is no external injuries. Prima-facie case is made out. Remand till 01.09.2022.'

Page Nos.5/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

'Page No.389

REMAND ORDER DATED 15.09.2022

OF V METROPOLITAN MAGISTRATE COURT

Accused seen on 15.09.2022 through Video
Conference. Remand extended till 26.09.2022.'

We find that both these orders pertain to another accused and not to Balaji who is the detenu qua captioned HCR. Therefore, the impugned preventive detention order made on the premise that the detenu was remanded to judicial custody after police custody period elapsed on 22.08.2022 flounders. In this regard, we deem it appropriate to refer to *Pramod Singla's* case (*Pramod Singla Vs. Union of India and Others*) decided by Honourable Supreme Court yesterday (10.04.2023) in criminal appeal arising out of S.L.P. (Crl.) No.10798 of 2022. To be noted, on facts, *Pramod Singla's* case also arises out of preventive detention under COFEPOSA. Therefore, the facts are similar as a preventive detention order was assailed in *Pramod Singla's* case. In this view of the matter, we deem it appropriate to refer to the ratio of Honourable Supreme Court in *Pramod Singla's* case and we find that two paragraphs namely paragraph 21 captioned 'Analysis' and the concluding paragraph being paragraph 44 are of relevance and the same read as follows:

Page Nos.6/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

'ANALYSIS

21. Before we deal with the issues framed, we find it important to note that preventive detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the state, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenu is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detenu, and even the slightest of errors in procedural compliances must result in favour of the detenu.

CONCLUSION

44. As has been mentioned above, preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are

Page Nos.7/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

checks and balances on the power of the Government. Every procedural rigidity, must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit to the case of the detenu. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties. This act of protecting civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British state.'

7. The ratio is, in preventive detention cases where the detenu is held in arrest not for a crime he has committed but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detenu and even the slightest of errors in procedural compliances must result in favour of the detenu. Therefore, if this ratio is applied with rigour to the case on hand in the light of the narrative thus far, we find that the preventive detention order which has been made on the basis that the detenu was remanded to judicial custody on 22.08.2022 on elapsing of police

Page Nos.8/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

custody and was so remanded to judicial custody till 26.09.2022 is clearly a flaw in the manner in which the impugned preventive detention order has been made. We also notice that this impairs the right of the detenu to make an effective representation against the impugned preventive detention order and such right of the detenu to make an effective representation against the impugned preventive detention order is a constitutional safeguard enshrined in Clause (5) of Article 22 of the Constitution of India.

8. We remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. In the light of discussion and dispositive reasoning thus far, we have no difficulty in saying that the impugned preventive detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 20.09.2022 bearing reference No.327/BCDFGISSV/2022 made by the second respondent is set aside and the detenu Thiru.Balaji, male, aged 28 years, son of Thiru.Veeraraghavan is directed to be set at liberty forthwith, if not

Page Nos.9/11

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



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H.C.P.No.2168 of 2022



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H.C.P.No.2060 of 2022

required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
11.04.2023

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.

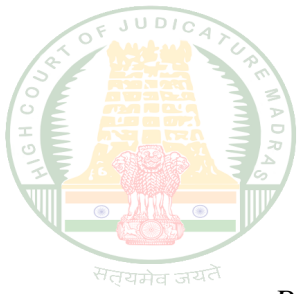
To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600009.
- 2.The Commissioner of Police,
Greater Chennai City, Vepery, Chennai 600007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai 600 066.
- 4.The Assistant Commissioner of Police,
Arumbakkam Range, Anna Nagar District,
Chennai 600106.
- 5.The Inspector of Police,
K-8 Arumbakkam Police Station, Chennai.
- 6.The Public Prosecutor
High Court, Madras.

Page Nos.10/11

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

6. The same point on which the aforementioned HCP is allowed is available to the petitioner in the case on hand also. The most relevant paragraph in the impugned preventive detention order is as follows:



H.C.P.No.2168 of 2022

'After the Police custody, on 22.08.2022, the Inspector of Police produced again the accused Thiru.Balaji and Thiru.Santhoshkumar before the Court of learned Vth Metropolitan Magistrate, Egmore, Chennai – 600 008 and they were remanded to judicial custody. Further, their remand period was extended till 26.09.2022.'

Therefore it follows as an inevitable sequitur that captioned HCP also has to be allowed.

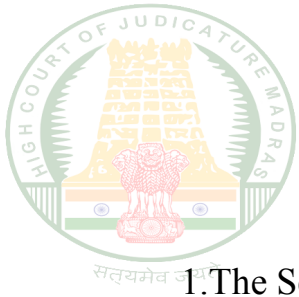
7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 20.09.2022 bearing reference 329/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Senthilkumaran, aged 38 years, son of Thiru.Sundaravadivel, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
18.04.2023
(4/5)

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To



H.C.P.No.2168 of 2022

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- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Chennai District.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai District.
- 4.The Inspector of Police (L & O),
K-8, Arumbakkam Police Station,
Chennai District.
- 5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.2168 of 2022

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

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H.C.P.No.2168 of 2022

18.04.2023
(4/5)