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H.C.P.No.2325 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

H.C.P.No.2325 of 2022

K.Kakil @ Madhan

.. Petitioner

Vs

1.State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The Commissioner of Police cum
District Magistrate, Commissioner Office,
Greater Chennai, Veppery, Chennai – 7.

3.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai – 66.

4.State by The Inspector of Police,
P6 Kodungaiyur Police Station,
Chennai – 118.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records in connection with the grounds of detention and the detention

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order in 294/BCDFGISSSV/2022 made by the second respondent dated 06.09.2022 and passed an order in TPDA No.3607 by the second respondent on 07.09.2022 against the detenu Kakil @ Madhan, male, aged 22 years, S/o.Kannadasan as 'Drug Offender' who is now confined at Central Prison, Puzhal II, Chennai and quash the same and direct the respondents to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Baskar
for Mr.T.Shanmugaboopathi

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 the detenu assailing a 'preventive detention order dated 06.09.2022 bearing reference No.294/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.

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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.631 of 2022 on the file of P6 Kodungaiyur Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(B), 25, 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985. 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.M.Baskar, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional



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Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for
all respondents are before us.

5. In the hearing, learned counsel for the petitioner submitted that three co-accused in the ground case were clamped with similar preventive detention orders and similar preventive detention orders were assailed in H.C.P.Nos.1981, 1982 and 2024 of 2022. All these three HCPs were allowed by this Court in and by an order dated 05.04.2023 reported vide neutral citation of Madras High Court being **2023:MHC:1756**. A scanned reproduction of the same is as follows:



H.C.P.No.2325 of 2022

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H.C.P.Nos.1981, 1982 and 2024 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

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

H.C.P.Nos.1981, 1982 and 2024 of 2022

M.Vasanth Kumar	.. Petitioner in H.C.P.No.1981 of 2022
S.Chandrasekar	.. Petitioner in H.C.P.No.1982 of 2022
J.Nagomi Nirmala	.. Petitioner in H.C.P.No.2024 of 2022

Vs.

- 1.State of Tamil Nadu
rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai, Veppery, Chennai - 7.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai District,
Special Prison for Women, Chennai - 66.
- 4.State by
The Inspector of Police,
P6 Kodungaiyur Police Station,
Chennai - 118.

.. Respondents in
HCP Nos.1981
and 1982 of
2022



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H.C.P.No.1981, 1982 and 2024 of 2022

- 1.State of Tamil Nadu
rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9,
- 2.The Commissioner of Police,
Commissioner Office,
Greater Chennai, Veppery, Chennai - 7,
- 3.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai District,
Chennai - 66.
- 4.State by
The Inspector of Police,
P6 Kodungaiyur Police Station,
Chennai - 118,

Respondents in
HCP No.2024
of 2022

Prayer in H.C.P.No.1981 of 2022: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in connection with the grounds of detention and the detention order in 288/BCDFGISSSV/2022 made by the second respondent dated 05.09.2022 and passed an order in TPDA No.451 by the second respondent on 06.09.2022 against the detainee Vinothini, female, age 25 years, W/o.Vasanth Kumar as 'Drug Offender', who is now confined at Central Prison, Puzhal (Special Prison for Women) and quash the same and direct the respondents to produce the body and person of the detainee before this Court and set her at liberty.

Prayer in H.C.P.No.1982 of 2022: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in connection with the grounds of detention and the detention order in



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H.C.P.Nos.1981, 1982 and 2024 of 2022

293/BCDFG1SSSV/2022 made by the second respondent dated 06.09.2022 and passed an order in TPDA No.453 by the second respondent on 06.09.2022 against the detenue Dharani, female, age 24 years, W/o.Chandrasekar as 'Drug Offender', who is now confined at Central Prison, Puzhal (Special Prison for Women) and quash the same and direct the respondents to produce the body and person of the detenue before this Court and set her at liberty.

Prayer in H.C.P.No.2024 of 2022: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in connection with the grounds of detention and the detention order in 287/BCDFG1SSSV/2022 made by the second respondent dated 05.09.2022 and passed an order in TPDA No.3604 by the second respondent on 06.09.2022 against the detenu Albert, male, age 26 years, S/o.John Sagayaraj as 'Drug Offender', who is now confined at Central Prison, Puzhal II, Chennai and quash the same and direct the respondents to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner	:	Mr.R.C.Paul Kanagaraaj for Mr.K.Karthik in H.C.P. Nos.1981 and 1982 of 2022 Mr.M.Vignesh for Mr.S.Syed Mazhar Hayath in H.C.P. No.2024 of 2022
For Respondents	:	Mr.R.Muniyapparaj, Additional Public Prosecutor assisted by Mr.M.Sylvester John in all HCPs



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H.C.P.Nos 1981, 1982 and 2024 of 2022

COMMON ORDER

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

This common order will now dispose of captioned three 'Habeas Corpus Petitions' ('HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity). In this order, H.C.P.No.1981 of 2022 shall be referred to as 'I HCP', H.C.P.No.1982 of 2022 shall be referred to as 'II HCP' and H.C.P.No.2024 of 2022 shall be referred to as 'III HCP' for the sake of convenience and clarity.

2. I HCP has been filed by husband of detainee assailing a 'preventive detention order dated 05.09.2022 bearing reference No.288/BCDFG1SSSV/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.

3. II HCP has been filed by husband of detainee assailing a 'preventive detention order dated 06.09.2022 bearing reference No.293/BCDFG1SSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth



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H.C.P.Nos.1984, 1982 and 2024 of 2022

respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

4. III HCP has been filed by mother of detenu assailing a 'preventive detention order dated 05.09.2022 bearing reference No.287/BCDFG1SSSV/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.

5. Impugned detention orders have 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 detenus are 'Drug Offenders' within the meaning of Section 2(e) of Act 14 of 1982.



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H.C.P.Nos.1983, 1982 and 2024 of 2022

6. In I HCP, there is one adverse case and in II HCP, there are three adverse cases. In III HCP, there is no adverse case. The ground case which is the sole substratum of the impugned detention orders is Crime No.631 of 2022 on the file of P6 Kodungalyur Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(B), 25, 29(1) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' (hereinafter 'NDPS Act' for the sake of convenience and clarity. Owing to the nature of the challenge to the impugned detention orders, it is not necessary to delve into the factual matrix or be detained further by facts.

7. Mr.R.C.Paul Kanagaraj, learned counsel representing Mr.Karthik, learned counsel for petitioner in I and II HCPs, Mr.M.Vignesh, learned counsel representing Mr.S.Syed Mazhar Hayath, learned counsel on record for petitioner in III HCP and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.

8. In all the three captioned HCPs, the same point arises for consideration. To be noted, though several points/grounds have been urged/raised in the support affidavit, learned counsel for



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H.C.P.Nos.1981, 1982 and 2024 of 2022

petitioners Mr.R.C.Paul Kanagaraj appearing on behalf of counsel on record in I and II HCPs and Mr.M.Vignesh, learned counsel representing the counsel on record for petitioner in III HCP projected their campaign against the impugned detention orders on one point and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenus being enlarged on bail.

9. It is submitted that for arriving at the aforementioned subjective satisfaction, the detaining authority has relied on a bail order dated 31.08.2018 made in CrI.M.P.No.662 of 2018 vide Crime No.327 of 2018 on the file of P4 Basin Bridge Police Station, Chennai. To be noted, in this 31.08.2018 bail order, one Velazhaki is the petitioner and therefore this matter shall be referred to as *Velazhaki's* case. It was argued by learned counsel for petitioners that *Velazhaki's* case is not similar qua ground case for two reasons and learned counsel points out that in *Velazhaki's* case, Sections 25 and 29(1) of NDPS Act are not charging sections whereas the same are charging sections in the ground case. The second distinction drawn is, in *Velazhaki's* case the Special Public Prosecutor has made an endorsement in the bail petition saying that the petitioner may be released on bail on any condition. In response

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to this submission, learned State Additional Public Prosecutor submitted to the contrary by saying that the two cases are broadly comparable.

10. We carefully perused the bail order in *Velazhaki's* case. We find that the argument of the learned counsel for petitioners stands sustained as there is no Section 25 or 29(1) viz., allowing premises to be used for commission of offence and abetment and conspiracy. This makes a world of difference between the two cases and takes them out of a common comparable zone.

11. Be that as it may, one paragraph in *Velazhaki's* case reads as follows:

'The learned Special Public Prosecutor made an endorsement in the bail petition stating that the petitioner may be released on bail on any condition.'

12. Therefore, it is clear that in *Velazhaki's* case, Prosecutor has made an endorsement in writing in the bail petition itself saying that the petitioner may be released on bail on 'any condition'. This means that this case cannot be relied on as a similar case for arriving at subjective satisfaction qua imminent possibility

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of the detenus being enlarged on bail in the cases on hand. To put it differently, this is comparing oranges and apples. This means that detaining authority's subjective satisfaction in this regard stands shattered like a fallen prism.

13. The consequence of discussion and dispositive reasoning supra is all three impugned detention orders deserve to be dislodged.

14. Ergo, the sequitur is,

(i) H.C.P. No.1981 of 2022 is allowed, impugned detention order dated 05.09.2022 bearing reference No.288/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Tmt.Vinothini, female, aged 25 years, wife of Thiru.Vasanthakumar, now detained in Special Prison for Women, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(ii) H.C.P. No.1982 of 2022 is allowed, impugned detention order dated 06.09.2022 bearing reference No.293/BCDFGISSSV/2022 made by the second



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H.C.P.Nos.1981, 1982 and 2024 of 2022

respondent is set aside and detenu Tmt.Dharani, female, aged 24 years, wife of Thiru.Chandrasekar, now detained in Special Prison for Women, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(iii) H.C.P. No.2024 of 2022 is allowed, impugned detention order dated 05.09.2022 bearing reference No.287/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Thiru.Albert, male, aged 26 years, son of Thiru.John SagayaraJ, 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.)
05.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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**P.S: Registry to forthwith communicate this order to Jail authorities in (i) Central Prison, Puzhal, Chennai.
(ii) Special Prison for Women, Central Prison, Puzhal, Chennai.**



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6. Learned counsel for the petitioner submits that the points on which aforementioned HCPs were allowed are available in the captioned HCP also. This means that the impugned preventive detention order in the captioned HCP also deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.09.2022 bearing reference No.294/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Kakil @ Madhan, aged 22 years, S/o.Thiru.Kannadasan, 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.)
20.04.2023

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.

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To

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- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police cum
District Magistrate, Commissioner Office,
Greater Chennai, Veppery, Chennai – 7.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
P6 Kodungaiyur Police Station,
Chennai – 118.
- 5.The Public Prosecutor
High Court, Madras.



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

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20.04.2023

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