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H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

H.C.P.No.2357 of 2022

Ramamurthy
S/o.Ramadoss

.. Petitioner/Father of Detenu

Vs.

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

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 600 007.

3.The Superintendent of Police,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
H-3, Tondiarpet Police Station,
Tondiarpet, Chennai.

.. Respondents



H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 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 records relating to the Detention Order Memo No.BCDFGISSSV No.285/2022 dated 02.09.2022 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and quash the same and direct the respondent to produce the Sathish Kumar @ Kava Sathish, Male, 22 years now confined in Central Prison, Puzhal, Chennai, before this Court and set the detenu Sathish Kumar @ Kava Sathish, Male 22 years at liberty.

For Petitioner : Ms.M.Manjula
for Mr.S.Vellidoss

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

H.C.P.No.2372 of 2022

Priyanka

W/o.Rajasekar @ Gana Sekar

.. Petitioner/Wife of Detenu

Vs.

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

2.The Commissioner of Police,
Greater Chennai.



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

4.State Rep by Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the 2nd respondent pertaining to the order made in No.284/BCDFGISSSV/2022 dated 02.09.2022 in detaining the detainee under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detainee, namely Rajasekar @ Gana Sekar, aged 29 years, Son of Vijayakumar who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at Liberty.

For Petitioner : Mr.B.Bharath

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

H.C.P.No.2418 of 2022

Selvi
W/o.Selvam

.. Petitioner/Mother of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.



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2.The Commissioner of Police,
Chennai City.

3.The Superintendent,
Central Prison - II,
Puzhal.

4.The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of Detention passed by the second respondent dated 02.09.2022 in No.280/BCDFGISSSV/2022 against the petitioner's Son Surya @ Meenkuzhambu Surya, male, aged about 24 years, Son of Selvam, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu

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

H.C.P.No.2455 of 2022

Selvi
W/o.Selvam

.. Petitioner/Mother of Detenu

Vs.



H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Central Prison - II,
Puzhal, Chennai.

4.The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of Detention passed by the second respondent dated 02.09.2022 in No.282/BCDFGISSSV/2022 against the petitioner's Son Saravanan, male aged about 22 years, Son of Selvam, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu

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

H.C.P.No.2540 of 2022

Monisha
W/o.Sankar @ Periya Appunu

.. Petitioner/Wife of Detenu



H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

Vs.

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- 1.State of Tamil Nadu represented
by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.
- 4.State Rep by Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the 2nd respondent pertaining to the order made in No.281/BCDFGISSSV/2022 dated 02.09.2022 in detaining the detainee under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detainee, namely Sankar @ Periya Appunu, aged 26 years, Son of Muthu, who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at Liberty.

For Petitioner : Mr.B.Bharath

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



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COMMON ORDER

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

This common order will now dispose of the captioned five 'Habeas Corpus Petitions' [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity].

2. H.C.P. No.2357 of 2022 has been filed by father of detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference 285/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity].

3. H.C.P. No.2372 of 2022 has been filed by wife of detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference 284/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity].

4. H.C.P. No.2418 of 2022 has been filed by mother of detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference 280/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity].



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WEB COPY 5. H.C.P. No.2455 of 2022 has been filed by mother of detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference 282/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity].

6. H.C.P. No.2540 of 2022 has been filed by wife of detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference 281/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, in all HCPs fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention orders have been made by second respondent.

7. 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 detenu in each case is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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WEB COPY 8. In H.C.P.No.2357 of 2022, there is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.236 of 2022 on the file of H-3 Tondiarpet Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].

9. In H.C.P.No.2372 of 2022, there are two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.236 of 2022 on the file of H-3 Tondiarpet Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) of IPC.

10. In H.C.P.No.2418 of 2022, there are two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.236 of 2022 on the file of H-3 Tondiarpet Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) of IPC.



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11. In H.C.P.No.2455 of 2022, there is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.236 of 2022 on the file of H-3 Tondiarpet Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) of IPC.

12. In H.C.P.No.2540 of 2022, there is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.236 of 2022 on the file of H-3 Tondiarpet Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) of IPC. 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.

13. Ms.M.Manjula, learned counsel representing the counsel on record for petitioner in H.C.P.No.2357 of 2022, Mr.B.Bharath, learned counsel for petitioner in H.C.P.Nos.2372 & 2540 of 2022, Mr.A.Venkateswara Babu, learned counsel for petitioner in H.C.P.Nos.2418 & 2455 of 2022 and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.



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14. In the hearing we find that one common point is available across the board in all five captioned HCPs. This common point turns on Remand Order and Remand Extension Order in the ground case. The Remand Order is dated 08.08.2022 and Remand Extension Order is dated 22.08.2022. The Remand Order and Remand Extension Order are in English and Tamil translations have been furnished. These are at pages 59 to 66 (H.C.P.No.2357 of 2022), 101 to 108 (H.C.P.No.2372 of 2022), 120 to 127 (H.C.P.No.2418 of 2022), 70 to 77 (H.C.P.No.2455 of 2022) and 87 to 94 (H.C.P.No.2540 of 2022) of the grounds booklet. We carefully perused these pages of the grounds booklet. We find that in the Remand Order, the Crime Number has been given as 236 of 2022 on the file of H-3 Tondiarpet Police Station but in the Tamil translation, the Crime Number has been given as 326 of 2022. This is not the end of the matter. In the Remand Extension Order, the Coram shows the name of Thiru.M.Dayalan, M.L., but the signature portion shows the name of Thiru.K.Sakthivel. However, in the translation both in the Coram part and in the signature part, the name of Thiru.K.Sakthivel has been shown. All these have to be read in the context of paragraph 2 of the impugned detention order in H.C.P.No.2357 of 2022 and paragraph 3 of impugned detention orders in other 4 HCPs, more particularly, that portion of paragraph at page No.5 (H.C.P.No.2357 of 2022), page No.6 (H.C.P.No.2372 of 2022),



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page No.6 (H.C.P.No.2418 of 2022), page No.5 (H.C.P.No.2455 of 2022) and page No.5 (H.C.P.No.2540 of 2022) of the impugned detention orders. For convenience, we deem it appropriate to extract and reproduce the most relevant portions and the same reads as follows:

H.C.P. No.2357 of 2022

'Further, the arrest intimation of the accused Thiru.Sathish @ Kava Sathish was given to their sister Tmt.Monisha, on the same day, in person. On 08.08.2022, the accused Tvl.Rajasekar @ Gana Sekar, Balaji @ Thatha Balaji, Nagaraj, Rahul @ Arch Rahul, Sathish Kumar @ Kava Sathish, Yuvaraj, Sankar @ Periya Appunu, Tamilselvan @ Thamizh, Bharath, Surya @ Meenkuzhambu Surya and Saravanan were produced before the learned XVIth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal as remand prisoners till 22.08.2022. Their remand period was extended periodically till 05.09.2022.'

H.C.P. No.2372 of 2022

'Further, the arrest intimation of the accused Thiru.Rajasekar @ Gana Sekar was communicated to his wife Tmt.Priyanka, on the same day, in person. On 08.08.2022, the accused Tvl.Rajasekar @ Gana Sekar, Balaji @ Thatha Balaji, Nagaraj, Rahul @ Arch Rahul, Sathish Kumar @ Kava Sathish,



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Yuvaraj, Sankar @ Periya Appunu, Tamilselvan @ Thamizh, Bharath, Surya @ Meenkuzhambu Surya and Saravanan were produced before the learned XVIth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal as remand prisoners till 22.08.2022. Their remand period was extended periodically till 05.09.2022.'

H.C.P. No.2418 of 2022

'Further, the arrest intimation of the accused Thiru.Surya @ Meenkuzhambu Surya was communicated to his mother Tmt.Selvi, on the same day, in person. On 08.08.2022, the accused Tvl.Rajasekar @ Gana Sekar, Balaji @ Thatha Balaji, Nagaraj, Rahul @ Arch Rahul, Sathish Kumar @ Kava Sathish, Yuvaraj, Sankar @ Periya Appunu, Tamilselvan @ Thamizh, Bharath, Surya @ Meenkuzhambu Surya and Saravanan were produced before the learned XVIth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal as remand prisoners till 22.08.2022. Their remand period was extended periodically till 05.09.2022.'

H.C.P. No.2455 of 2022

'Further, the arrest intimation of the accused Thiru.Saravanan was communicated to his mother Tmt.Selvi, on the same day, in person. On 08.08.2022, the accused Tvl.Rajasekar @ Gana Sekar, Balaji @ Thatha Balaji, Nagaraj, Rahul @ Arch Rahul, Sathish Kumar @ Kava Sathish, Yuvaraj,



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Sankar @ Periya Appunu, Tamilselvan @ Thamizh, Bharath, Surya @ Meenkuzhambu Surya and Saravanan were produced before the learned XVIth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal as remand prisoners till 22.08.2022. Their remand period was extended periodically till 05.09.2022.'

H.C.P. No.2540 of 2022

'Further, the arrest intimation of the accused Thiru.Sankar @ Periya Appunu was communicated to his wife Tmt.Monisha, on the same day, in person. On 08.08.2022, the accused Tvl.Rajasekar @ Gana Sekar, Balaji @ Thatha Balaji, Nagaraj, Rahul @ Arch Rahul, Sathish Kumar @ Kava Sathish, Yuvaraj, Sankar @ Periya Appunu, Tamilselvan @ Thamizh, Bharath, Surya @ Meenkuzhambu Surya and Saravanan were produced before the learned XVIth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal as remand prisoners till 22.08.2022. Their remand period was extended periodically till 05.09.2022.'

15. In the impugned preventive detention orders, learned Magistrate has been shown as XVI Metropolitan Magistrate and the detaining authority has relied on the point that remand was extended periodically till 05.09.2022. This means that the detaining authority has relied on the remand extension orders for making the impugned preventive detention orders. The errors



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which are noticed at pages 59 to 66 (H.C.P.No.2357 of 2022), 101 to 108 (H.C.P.No.2372 of 2022), 120 to 127 (H.C.P.No.2418 of 2022), 70 to 77 (H.C.P.No.2455 of 2022) and 87 to 94 (H.C.P.No.2540 of 2022) of the grounds booklet make it clear that remand extension orders are under a serious cloud, i.e., hazy and lacking in clarity. Therefore, we find that the impugned preventive detention orders are predicated on orders which are clearly under a cloud and the articulation in the impugned preventive detention orders that the remand has been periodically extended up to 05.09.2022 is clearly flawed. It is so flawed that it graduates to non application of mind which is a certain ground for interfering with preventive detention orders. The sequitur is impugned detention orders deserve to be dislodged.

16. Ergo, the sequitur is,

(i) H.C.P. No.2357 of 2022 is allowed and impugned detention order dated 02.09.2022 bearing reference 285/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sathish Kumar @ Kava Sathish, male, aged 22 years, Son of Thiru.Ramamurthy 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.



H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

(ii) H.C.P. No.2372 of 2022 is allowed and impugned detention order dated 02.09.2022 bearing reference 284/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Rajasekar @ Gana Sekar, male, aged 29 years, Son of Thiru.Vijayakumar 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.

(iii) H.C.P. No.2418 of 2022 is allowed and impugned detention order dated 02.09.2022 bearing reference 280/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Surya @ Meenkuzhambu Surya, male, aged 24 years, Son of Thiru.Selvam 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.

(iv) H.C.P. No.2455 of 2022 is allowed and impugned detention order dated 02.09.2022 bearing reference 282/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Saravanan, male, aged 22 years, Son of Thiru.Selvam 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.

(v) H.C.P. No.2540 of 2022 is allowed and impugned detention order dated 02.09.2022 bearing reference 281/BCDFGISSSV/2022 made by the



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second respondent is set aside and the detenu Thiru.Sankar @ Periya

Appunu, male, aged 26 years, Son of Thiru.Muthu 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.)

10.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

rsi

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

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 600 007.

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

4.The Inspector of Police,
H-3, Tondiarpet Police Station,
Tondiarpet, Chennai.



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H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

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

rsi

5.The Public Prosecutor,
High Court, Madras.

H.C.P.Nos.2357, 2372, 2418, 2455 & 2540 of 2022

10.04.2023