



HCP(MD)Nos.585, 601, 602, 794, 805 and 806 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)Nos.585, 601, 602, 794, 805 and 806 of 2023

S.Santhi	: Petitioner in H.C.P.(MD)No.585/23
N.Jebila	: Petitioner in H.C.P.(MD)No.601/23
M.Thamarai Selvi	: Petitioner in H.C.P.(MD)No.602/23
Elangeshwaran	: Petitioner in H.C.P.(MD)No.794/23
Velmurugan	: Petitioner in H.C.P.(MD)No.805/23
Rajarithinam	: Petitioner in H.C.P.(MD)No.806/23

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.



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3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents in all H.C.Ps.

4.The Superintendent,
District Jail,
Nagercoil,
Kanniyakumari District.

: 4th Respondent in H.C.P.(MD)Nos.794, 805 & 806/23

PRAYER in H.C.P.(MD)No.585 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl. No.54/2023 dated 28.03.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely petitioner's son ie.,Muthuraj, aged about 23 years, S/o.Selvakumar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.601 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order



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passed in H.S.(M)Confdl. No.53/2023 dated 28.03.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely petitioner's husband ie.,Namo Narayanan, aged about 33 years, S/o.Velladurai, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.602 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl. No.55/2023 dated 28.03.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely petitioner's husband ie.,Baskar, aged about 29 years, S/o.Perumal, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.794 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl. No.52/2023 dated 24.03.2023 on the file of the second respondent herein and quash the same and direct the



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respondents to produce the detenu or body of the detenu namely Elangeshwaran, aged about 29 years, S/o.Jeyakumar, now detained at the District Jail, Nagercoil, Kanniyakumari District before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.805 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl. No.51/2023 dated 24.03.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Velmurugan, aged about 29 years, S/o.Singaraj @ Singaraja, now detained at the District Jail, Nagercoil, Kanniyakumari District before this Court and set him at liberty forthwith.

PRAYER in H.C.P.(MD)No.806 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl. No.50/2023 dated 24.03.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Rajarathinam, aged about 29 years, S/o.Kamraj, now detained at the



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District Jail, Nagercoil, Kanniyakumari District before this Court and set him at liberty forthwith.

For Petitioners : Mr.N.Pragalathan
[In all HCPs]

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
[In all HCPs]

COMMON ORDER

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

This common order will now govern captioned six 'Habeas Corpus Petitions' ['HCPs' in plural and 'HCP' in singular for the sake of brevity, convenience and clarity] captioned HCPs have been filed in this Court on 09.05.2023, 09.05.2023, 09.05.2023, 03.07.2023, 04.07.2023 and 04.07.2023, respectively.

2.As regards captioned 6 HCPs ie., H.C.P.(MD)Nos.585, 601, 602, 794, 805 and 806 of 2023, they shall be referred to as 'I HCP, II HCP, III HCP, IV HCP, V HCP and VI HCP' respectively, for the sake of convenience.

3.When the captioned HCPs were listed in the admission board before Hon'ble Predecessor Coordinate Bench on 10.05.2023,



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10.05.2023, 10.05.2023, 06.07.2023, 07.07.2023 and 07.07.2023,
respectively, the following six orders were made:

I HCP:

H.C.P.(MD) No. 585 of 2023

G.R.SWAMINATHAN, J.
and
S.SRIMATHY, J.

Admit.

2. Mr. T. Senthil Kumar learned
Additional Public Prosecutor, takes
notice for the respondents and
seeks time to get instructions.

3. Post after 5th weeks.

[G.R.S., J.] [S.S.Y., J.]
10.05.2023

krk

II HCP:

H.C.P.(MD) No. 601 of 2023

G.R.SWAMINATHAN, J.
and
S.SRIMATHY, J.

Admit.

2. Mr. T. Senthil Kumar learned
Additional Public Prosecutor, takes
notice for the respondents and
seeks time to get instructions.

3. Post after 5th weeks.

[G.R.S., J.] [S.S.Y., J.]
10.05.2023

krk



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III HCP:

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H.C.P.(MD) No. 602 of 2023

G.R.SWAMINATHAN, J.
and
S.SRIMATHY, J.

Admit.

2. Mr. T. S. S. J. learned Additional Public Prosecutor, takes notice for the respondents and seeks time to get instructions.

3. Post after 2 weeks.

[Signature]
[G.R.S., J.] [S.S.Y., J.]
10.05.2023

krk

IV HCP:

HCP(MD) No. 794 of 2023

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadikumar learned Additional Public Prosecutor, takes notice for the respondents. He seeks time to file counter affidavit.

Post after 2 weeks.

[Signature]
[M.S.R., J.] [M.N.K., J.]
08.09.2023

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V HCP:

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HCP(MD) No. 585 of 2023

M.S.RAMESH, J
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thirumathi Kumar,
learned Additional Public Prosecutor, takes
notice for the respondents. He seeks time to
file counter affidavit.

Post after 6 weeks.

[Signature]
[M.S.R.,J] [M.N.K.,J]
07.07.2023

mbf

VI HCP:

HCP(MD) No. 806 of 2023

M.S.RAMESH, J
and
M.NIRMAL KUMAR, J.

Admit.

Mr. D. Thirumathi Kumar,
learned Additional Public Prosecutor, takes
notice for the respondents. He seeks time to
file counter affidavit.

Post after 6 weeks.

[Signature]
[M.S.R.,J] [M.N.K.,J]
07.07.2023

mbf



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4.It has now become necessary to set out short facts that are imperative for appreciating this final order. To be noted, captioned HCPs are now in the final hearing board after counter affidavit have been filed by second respondent.

5.Factual matrix in captioned six HCPs are as follows:

i) I HCP has been filed assailing the preventive detention order dated 28.03.2023 bearing reference H.S.(M)Confdl.No.54/2023 made by second respondent branding the I HCP petitioner's son Thiru.Muthuraj as a 'Goonda' within the meaning of Section 2(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 brevity, convenience and clarity];

ii) II HCP has been filed assailing the preventive detention order dated 28.03.2023 bearing reference H.S.(M)Confdl.No.53/2023 made by second respondent branding the II HCP petitioner's husband Thiru.Namo Narayanan as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982;



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iii) III HCP has been filed assailing the preventive detention order dated 28.03.2023 bearing reference H.S.(M)Confdl.No.55/2023 made by second respondent branding the III HCP petitioner's husband Thiru.Baskar as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982;

iv) IV HCP has been filed assailing the preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.52/2023 made by second respondent branding the IV HCP petitioner Thiru.Elangeshwaran as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982;

v) V HCP has been filed assailing the preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.51/2023 made by second respondent branding the V HCP petitioner Thiru.Velmurugan as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982;

vi) VI HCP has been filed assailing the preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.50/2023 made by second respondent branding the VI HCP petitioner Thiru.Rajarathinam as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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6.To be noted, preventive detention orders shall hereinafter be referred to as 'impugned preventive detention orders', the second respondent who made these impugned preventive detention orders shall be referred to as 'detaining authority' and the persons against whom the impugned preventive detention orders have been made by the detaining authority shall hereinafter be referred to as 'detenues'.

7.In the final hearing board, today, Mr.N.Pragalathan, learned Counsel for HCP petitioners and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for the respondents are before us.

8.We carefully considered the rival submissions.

9.Mr.N.Pragalathan, learned Counsel on record for the HCP petitioners in the captioned six HCPs projected his campaign against the six impugned preventive detention orders on one common point and that one common point turns on impairment of subjective satisfaction of the detaining authority *qua* imminent possibility of detenues being enlarged on bail.



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10.In all these captioned HCPs, the detaining authority has relied on a bail order dated 07.10.2021 in CrI.M.P.No.1027 of 2021 on the file of Special Court for Trial of cases under 'the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No. 33 of 1989)' [hereinafter 'SC & ST (PoA) Act', Thoothukudi and one Thiru.Selvaraj is the petitioner therein. Therefore, this case shall be referred to as **Selvaraj's** case.

11.In the six impugned preventive detention orders, the detaining authority has relied on aforementioned **Selvaraj's** case bail order in the following manner:

'I am also aware that in a similar case registered in Sathankulam Police Station Cr.No.142/2021 u/s 294, 302 IPC and 3(1)(r), 3(1)(s), 3(2)(Va) SC/ST (Prevention of Atrocities)Amendment, Act, 2015 bail was granted to accused Selvaraj by Sessions Judge, Special Court for trial of cases under SC/ST Thoothukudi vide Cr.M.PNo.1027/2021 dated 07.10.2021. I therefore infer that there is a real possibility of his coming out on bail in the above case by filing bail petition in the appropriate courts, since bails are granted by Courts in such cases.'

12.Adverting to the aforementioned portions in the grounds of impugned preventive detention orders, learned Counsel submitted



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that the subjective satisfaction arrived at by the detaining authority is completely flawed as **Selvaraj's** case bail order is a default bail under Section 167(2) of 'the Code of Criminal Procedure, 1973 (2 of 1974) [hereinafter 'Cr.P.C.' for brevity].

13.This Bench had the benefit of perusing **Selvaraj's** case bail order which has been furnished to the detenues as part of the grounds booklet and there cannot be any discretion for the Bail Court as **Selvaraj's** case being a default bail under Section 167(2) of Cr.P.C.

14.In response to the aforementioned arguments learned Prosecutor for the respondents submitted that the alleged offences in **Selvaraj's** case and the cases on hand are broadly comparable.

15.This Court has repeatedly held that when it comes to subjective satisfaction *qua* imminent possibility of detinue being enlarged on bail and when it comes to recording of such subjective satisfaction when comparing the ground case with another case bail order it is not merely the comparison of the alleged offences or charges but it is a case of comparison of the determinants and the parameters too. In a default bail under Section 167(2) of Cr.P.C., there is no discretion for the bail Court and it is merely in the nature of



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quantitative expression in law ie., arithmetic expression. This point was considered by this Court in ***Gomathi Vs.The Principal Secretary to Government and others*** reported vide Neutral Citation of Madras High Court being ***2023/MHC/334***.

16.In the light of the narrative thus far, ***Gomathi's*** case speaks for itself and it comes to the aid of the petitioners in the cases on hand. This means that subjective satisfaction arrived at by the detaining authority and the imminent possibility of the detenues being enlarged on bail are clearly impaired leaving the impugned preventive detention orders vitiated ie., vulnerable for being dislodged in the habeas legal drills on hand.

17.Ergo, the sequitur is, captioned I HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing reference H.S. (M)Confdl.No.54/2023 made by the second respondent is set aside and the detenu Thiru.Muthuraj, aged 23 years, son of Thiru.Selvakumar, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

18.Apropos, the sequitur is, captioned II HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing



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reference H.S.(M)Confdl.No.53/2023 made by the second respondent is set aside and the detenu Thiru.Namo Narayanan, aged 33 years, son of Thiru.Velladurai, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

19.In the result, captioned III HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing reference H.S.(M)Confdl.No.55/2023 made by the second respondent is set aside and the detenu Thiru.Baskar, aged 29 years, son of Thiru.Perumal, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

20.Therefore, captioned IV HCP is allowed. Impugned preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.52/2023 made by the second respondent is set aside and the detenu Thiru.Elangeshwaran, aged 29 years, son of Thiru.Jeyakumar, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

21.In the light of the discussion and dispositive reasoning thus far, captioned V HCP is allowed. Impugned preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.51/2023



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made by the second respondent is set aside and the detenu Thiru.Velmurugan, aged 29 years, son of Thiru.Singaraj @ Singaraja, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

22.By way of conclusion, captioned VI HCP is allowed. Impugned preventive detention order dated 24.03.2023 bearing reference H.S.(M)Confdl.No.50/2023 made by the second respondent is set aside and the detenu Thiru.Rajarathinam, aged 29 years, son of Thiru.Kamaraj, 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.]

20.11.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR



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Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai and District Jail, Nagercoil. All concerned are to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Superintendent,
District Jail,
Nagercoil,
Kanniyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

COMMON ORDER MADE IN
H.C.P.(MD)Nos.585, 601, 602, 794, 805 and 806 of 2023

20.11.2023