



HCP(MD)No.1076,1085 to 1087 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.03.2023
Pronounced on : 15.03.2023

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**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

H.C.P.(MD)Nos.1076,1085 to 1087 of 2022

Velammal	.. Petitioner/Mother of the Detenu in HCP(MD)1076/2022
Chelliah	.. Petitioner/Father of the Detenu in HCP(MD)1085/2022
Jesumary	.. Petitioner/Mother of the Detenu in HCP(MD)1086/2022
Sumithra	.. Petitioner/Wife of the Detenu in HCP(MD)1087/2022

Vs.

1.The State of Tamil Nadu,
rep., by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9.

3.The Inspector of Police,



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Kalldaikurichi Police Station,
Tirunelveli.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

5.The District Prison,
Perurani,
Thoothukudi District.

.. Respondents
in all cases

PRAYER in HCP(MD)1076/2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the records relating to the Detention Order passed by the 2nd respondent in M.H.S.Confdl.No.84/2022 dated 08.06.2022 and to quash the same and direct the respondents to produce the person or body of the detenu, Asaithambi, son of Kaliappan, aged about 28 years, to be detained at Central Prison, Palayamkottai, who is now detained in District Prison, Perurani, Thoothukudi District, before this Court and set him at liberty.

Prayer in HCP(MD)1085/2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the records relating to the Detention Order passed by the 2nd respondent in M.H.S.Confdl.No.85/2022 dated 08.06.2022 and to quash the same and direct the respondents to produce the person or body of the detenu,



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Alexkumar @ Alex, son of Chellaiah, aged about 25 years, to be detained at Central Prison, Palayamkottai, who is now detained in District Prison, Perurani, Thoothukudi District, before this Court and set him at liberty.

PRAYER in HCP(MD)1086/2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the records relating to the Detention Order passed by the 2nd respondent in M.H.S.Confdl.No.86/2022 dated 08.06.2022 and to quash the same and direct the respondents to produce the person or body of the detenu, Kathiravan, son of Thavasi, aged about 34 years, to be detained at Central Prison, Palayamkottai, who is now detained in District Prison, Perurani, Thoothukudi District, before this Court and set him at liberty.

PRAYER in HCP(MD)1087/2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the records relating to the Detention Order passed by the 2nd respondent in M.H.S.Confdl.No.87/2022 dated 08.06.2022 and to quash the same and direct the respondents to produce the person or body of the detenu, Vinothkumar, son of Thangavel, aged about 27 years, to be detained at Central Prison, Palayamkottai, who is now detained in District Prison, Perurani, Thoothukudi District, before this Court and set him at liberty.



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In all Cases:

For Petitioner : Mr.R.Anand
for Mr.M.Maharaja

For Respondents : Mr.A.Thiruvadikumar
Additional Public
Prosecutor

COMMON ORDER

K.K.RAMAKRISHNAN, J.

These petitions are filed on behalf of the detenus, who are accused in Crime No.120/2022 registered for the offence under Sections 147, 148 & 302 IPC altered into 147, 148 & 302 r/w 149 IPC by the third respondent police and the detenus have been detained by the second respondent by his order dated 08.06.2022 in M.H.S.Confdl.Nos.84, 85, 86 & 87/2022 holding them to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Herein after referred to as 'the Tamilnadu Act 14 of 1982'). The said detention orders are under challenge in these Habeas Corpus Petitions.



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2. The case of the prosecution is that on 15.05.2022 around 2.00 p.m in the Kallidaikurichi Sampathimedu Road, the detenues/accused persons waylaid one Sukumar and jointly committed murder of the said Sukumar and therefore, the Law Enforcing Authority registered a case in Crime No.120 of 2022 for the alleged offence under Sections 147, 148 and 302 IPC altered into Sections 147, 148 and 302 r/w 149 IPC. Thereafter, on 16.05.2022, all the accused were arrested by the Law Enforcing Authority and considering the propensity of the occurrence and the same was created panic in that locality, the detaining authority passed the detention order on the basis of the materials furnished by the sponsoring authority through the impugned detention order dated 08.06.2022.

3. The learned counsel for the petitioners in these petitions assailed the impugned detention orders that as per Section 8(1) of the Tamilnadu Act 14 of 1982, the documents relied by the detaining authority must have been furnished within five days and same was not served within five days. On further elaborating the said submission, he submitted that the detaining authority passed the detention order on 08.06.2022 and the



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booklet was furnished only on 13.06.2022. Hence, the same was not served within five days as per the provisions under Section 8(1) of the Tamilnadu Act 14 of 1982. Hence, he prayed for quashing the detention orders.

4. The learned counsel for the petitioners further submitted that the detenues never filed any bail application and hence the subjective satisfaction of the detaining authority that they would come out on bail is without application of mind and hence, the detention order is liable to be quashed.

5. He further submitted that there was a delay of 12 days in considering the representation submitted by the detenues and the said delay in considering the representation would hamper the personal liberty of the detenues and hence he prayed for quashing the detention orders.

6. He would also submit that the similar case bail particulars relied to arrive at the subjective satisfaction by the detaining authority is not similar in nature and hence there was non application of mind in respect of the similar case aspect, hence, he prayed for the quashing of the



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detention orders by placing reliance on the **Rekha** case reported in (2011)

5 SCC 244.

7. Countering the said submission, the learned Additional Public Prosecutor submitted that excluding the date of detention, the booklet was served within five days and hence there was no infraction of Section 8(1) of the Act. When the material placed before the detaining authority to infer the imminent possibility of the detenu coming out on bail is sufficient to arrive at such conclusion and there is no legislative mandate to pass the detention order only if the bail petition is pending. So far as the application of the **Rekha** case is concerned, the said **Rekha** case was subsequently reconsidered by the Hon'ble three Judges Bench of the Hon'ble Supreme Court in **Ankit Ashok Jalan** and in the said case, furnishing of the similar case particulars as held by the **Rekha** case was diluted by placing reliance on the Hon'ble constitution Bench Judgment of **Rameshwar Shaw (AIR 1964 SC 334)**, which was not placed before the **Rekha** case and hence, there was no necessity to furnish the similar case details with all similarities to arrive at subjective satisfaction.

8. The learned Additional Public Prosecutor further submitted that



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insofar as the delay of 12 days is concerned, due to some emergency situation arising out of the natural calamities, the authorities were engaged in some emergency work relating to the interest of the entire public at large. So the delay is neither wilful nor wanton and hence, the delay is to be condoned.

9. This Court considered the rival submissions made on both side and perused the materials placed on record.

10. No bail application:

The detaining authority arrived the conclusion on the premise that the detenues have a chance to file the bail application and in all possibility, they would come out on bail in near future by filing bail petition. The preventive detention jurisdiction is suspicion jurisdiction and the authority is only required to act on suspicion and reasonability. In this case, the detaining authority passed the impugned detention order on the notion that the detenues would file bail petition in near future and likely to come out on bail. If they come out on bail, they would act prejudicial to the public order. The similar contention was raised earlier before this Court in H.C.P(MD)No.15 of 2013 and this Court accepted



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the said plea and the same was reversed by the Hon'ble Supreme Court in the case of ***State of Tamilnadu and another v. Nabila and another***, reported in ***(2015) 12 SCC 127*** and the Hon'ble Supreme Court held that the satisfaction of the detaining authority that the detenues would come out on bail on filing the bail petition in future, without pendency of the bail petition is within the four corner of the Act. The relevant paragraph is as follows:

“Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The word 'likely to be released' connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word 'likely' shows it can be either way.”

10.1. Similarly, in the case of ***Senthamilselvi vs. State of Tamil Nadu and Ors.*** reported in ***(2006)5 SCC 676***, the Hon'ble Supreme Court has held as under:

“10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted



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that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be Ipse Dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement.[emphasis supplied] ”

10.2. The above interpretation is only to achieve the purpose of the preventive detention Act and the said jurisdiction is suspicion jurisdiction and hence the detaining authority acted on the ground reality on the materials produced before him that the detenues would file the bail application in future. In this aspect, it is relevant to rely the judgment



passed in ***Hare Ram Pandey vs. State of Bihar and Ors.*** reported in

2004 (3) SCC 289, by the Hon'ble Supreme Court to emphasis the object

of the preventive detention law:

“ 6. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive, but only preventive. It is resorted to when the Executive is convinced that such detention, is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is a purely subjective affair. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable.



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justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other.”

11. Non supply of documents within the period prescribed under Section 8(1) of the Tamilnadu Act 14 of 1982:

The learned counsel for the petitioners submitted that the date of detention to be included for calculating the period of five days to serve the copies has no legal stand. The issue is no longer *res integra* since the Hon'ble Supreme Court as well as the Division Bench of this Court already decided the issue in **1999 (4) SCC 228** and **2012 (2) LW (Crl) 679**, respectively.

11.1. For better appreciation of the said submission, it is relevant to extract Section 8(1) of the Tamilnadu Act 14 of 1982:

“8.(1)When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the



State Government.”

11.2. The section requires interpretation of a literal and natural meaning. The rule is well established that where a particular time is given from a certain date within which the act is to be done, the day on that date is to be excluded[(1972 (1) SCC 639)(Haru Das Gupt v. State of West Bengal)]. The same was expressly stated in Section 9 of the General Clauses Act which read as follows:

“9. Commencement and termination of time. ?

(1) In any¹⁸ [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word ‘from’, and, for the purpose of including the last in a series of days or any other period of time, to use the word ‘to’.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

11.3. The Hon'ble Supreme Court in 1999 (4) SCC 228(Jasbir Singh v. Lt.Governor, Delhi and another), considering the *impari materia*



provision of COFEPOSA laid down the law that the date of the detention order to be excluded.

“3.Coming to the first question as to whether by serving the grounds of detention on 30th March, 1994 there has been an infraction of Sub-section (3) of Section 3, the learned counsel appearing for the appellant urged that the order of detention having been served on 25th March, 1994 the grounds were required to be served within 5 days there from i.e. on 29th March, 1994 and not on 30th March, 1994 as has been factually done. According to the learned counsel the day on which the order of detention was served cannot be excluded for computing the period of 5 days within which the grounds of i detention is required to be served under Sub-section (3) of Section 3 of the Act. This question no longer remains res Integra, This Court in the case of Haru Das Gupta v. The State of West Bengal, was considering an identical provision under West Bengal Prevention of Violent Activities Act, 1970 and the Court held that the Rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded, The effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. The Court in coming to the aforesaid decision relied upon some English decisions and held that in computing the period, the date of



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commencement of detention that the first day has to be excluded. In the case in hand, therefore, for computing the period of 5 days the date 25th March, 1994 has to be excluded and so being done there is no infraction of Sub-section (3) of Section 3 of the Act when the grounds were served on 30th March, 1994. The High Court, therefore rightly rejected the said contention urged before it.”

11.4. In the case of P.Sivakami v. The State of Tamilnadu, reported in **2012(2) LW CrI 679**, this Court has held as follows:

“6. Even though we are inclined to set aside the impugned detention order on the above two grounds, we are inclined to go into the ground raised by the learned counsel for the Petitioner that the provisions of Section 8(1) of the Act has been violated and therefore the detention order is liable to be set aside. According to the learned counsel for the Petitioner, as per Section 8(1) of the Act, the documents pertaining to the order of detention should be served on the detenu within five days from the date of the order but, it was served on him with a delay of one day and hence the detention order is liable to be set aside on this ground. Admittedly, in the present case, the detention order was passed on 27.04.2012 and all the documents pertained to the detention order were served on the detenu on 02.05.2012 A bare reading of Section 8(1) of



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the Act, would clearly reveal that the date on which the detention order was passed has to be excluded. It is trite law that while interpreting statutes a literal, simple and natural meaning will have to be given. Considering the word “from” as occurred in [Section 9 of the General Clauses Act, 1897](#), it has been held by the Hon'ble Apex Court in [Tarun Prasad Chatterjee v. Dinanath Sharma](#). - (2000) 8 SCC 649, as under in paragraph Nos. 10 to 12.

“10. Section 9 of the General Clauses Act 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

11. In Halsbury's Laws of England, 37th Edn., Vol.3, p.92, it is stated as follows:

“Days included or excluded.— When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as ‘from such a day’ or ‘until such a day’ are



calculating five days period, which has been mentioned under Section 8(1) of the Act, for communicating documents pertaining to the detention order. Therefore, this contention of the learned counsel for the Petitioner is liable to be rejected and accordingly rejected.”

11.5. From the above, it is clear that while computing the period of five days as per Section 8(1) of the Tamilnadu Act 14 of 1982, the date of detention has to be excluded and the date of service must be included. In this case, applying the said principle, by excluding the date of detention order, the copy is served within 5 days as required by Section 8(1) of the Tamilnadu Act 14 of 1982.

12. Delay in considering the representation:

The learned Additional Public Prosecutor produced the proforma of the office of the first respondent containing various dates relating to the movement of the file which contain the representation of the detenues among the various department and explained the delay that the authorities have engaged in some emergency work relating to the public interest and hence there was some delay caused. The Secretaries are accumulated with number of works and also they are suddenly engaged to make their presence in some other social important matters which was



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timely required on that particular period. In the said circumstances, the explanation furnished for 6 days delay by the learned Additional Public Prosecutor is reasonable and the same was accepted by this Court. It is relevant to state that the Hon'ble Supreme Court held that length of delay is not material and the explanation furnished by the authorities must be reasonable and bonafide. This Court has every reason to accept the explanation furnished by the learned Additional Public Prosecutor, more particularly, the authorities said to have engaged in discharging duty of some natural calamities. Apart from that from the perusal of the proforma, file relating to the detenus' representation considered by the various authorities and the factual scenario indicated that representation was dealt with utmost expedition. So this Court did not find any negligence or callous inaction on the part of the respondent. The similar situation was dealt by the Hon'ble Supreme Court in **2006 (5) SCC 676** .

“6. Coming to the plea that there was delay in disposal of the representation it is to be noted that the order of detention is dated 1.12.2005. The representation was sent on 11.12.2005 which was received by the respondents on 15.12.2005. The details were called for on 16.12.2005 which were received on 20.12.2005. The file was submitted on 21.12.2005 and dealt with by the Under Secretary



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and Deputy Secretary on 22.12.2005. The concerned Minister passed order on 22.12.2005 and the order of rejection which was passed on 27.12.2005 was issued on 28.12.2005 which was sent to the Superintendent of the Jail where the detenu was incarcerated, which was communicated to the detenu. It was received by the prison authorities and it was served on the detenu on the day it was received by the Jail authority. The factual scenario indicated above indicates that the representation was dealt with utmost expedition. There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red-tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable. That is not the case at hand. It may be noted that the writ petition was filed on 22.12.2005, even before the order of rejection was served. That being so the



detenu cannot make grievance that the State had not explained the position as to how his representation was dealt with”.

13. Similar case:

The contention of the learned counsel for the petitioners that the similar case particulars are not similar in nature and hence, the detaining authority passed the order without application of mind to the similar case particulars and he placed reliance on **Rekha** case [2011 (5) SCC 244]. The said judgment was considered by the subsequent Hon'ble three judges Bench of Hon'ble Supreme Court in **Union of India v. Ankit Ashok Jalan** reported in (2020) 16 SCC 185 where the Hon'ble Supreme Court categorically held that during the hearing of **Rekha** case, earlier Hon'ble constitution Bench **Rameshwar Shaw** was not placed and hence the detaining authority need not looked into the similar case bail order. So the Hon'ble three Judges Bench in **Union of India v. Ankit Ashok Jalan** reported in (2020) 16 SCC 185 implidely explained that the requirement under **Rekha** case to furnish similar case particulars is not necessary and held that the detaining authority, even without placing reliance of the similar case bail order, arrived the subjective satisfaction to come out on bail. The relevant paragraph is extracted hereunder for



better appreciation:

“15. Now so far as the reliance placed upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sravanan (supra) by the learned Counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions shall not be of any assistance to the detenus and/or, as such, the same shall not be applicable to the facts of the case on hand. Even in the case of Rekha (supra), the decision of the Constitution Bench of this Court in the case of Rameshwar Shaw (supra) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned Counsel appearing on behalf of the detenus, in the case of Dimpy Happy Dhakad (supra), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact



that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in custody and is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the Detaining Authority”

Hence the contention of the learned counsel for the petitioners that the orders impugned in these petitions suffer infirmity on the ground of similar case particulars are not similar, is not accepted.

13.1. Looking from the another angle, this Court already dealt the “similar case” and “same case” in MANU/TN/1338/2014 ***Mariappan v. The District Collector and District Magistrate, Tirunelveli***, clearly held that the requirement of the **Rekha** case to furnish the “similar case particulars” cannot be confused with “same case particulars” by the following finding:

“71. While considering reasonableness of the



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detaining authority to arrive at the subjective satisfaction on the aspect of bail, we are of the view that the detaining authority can apply only rule of logic and reasonableness.

72. Though the detaining authority has used the expression, "similar cases", the court is conscious of the fact that there cannot be similarity or same set of facts. Similar cases, therefore in the humble opinion of this court, should be meant, 'similar offences', and it cannot be expected to have the same set of facts, with same overt acts against the accused involved."

14. Claim of Parity:

The quashment of detention orders passed against the co-accused/co-detenu in H.C.P(MD)No.1077 of 2022 is concerned, the said accused has no adverse case. Apart from that there was no parity in the detention proceedings when the detenues in the Habeas Corpus Petitions have previous antecedents.

15. This Court considering the role of the detenues in the propensity of the murder and the adverse case of the detenues, did not find any merit in the submission of the learned counsel for the petitioners to apply the principle of parity.



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16. In the result, since this Court finds that there are no merits in the submissions of the learned counsel for the detenues/petitioners, all these Habeas Corpus Petitions are dismissed.

[R.S.K.,J.] & [K.K.R.K., J.]
15.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

PJL

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9.

3. The Inspector of Police,
Kalldaikurichi Police Station,
Tirunelveli.

4. The Superintendent of Prison,
Central Prison,
Palayamkottai.



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5. The District Prison,
Perurani,
Thoothukudi District.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

**Pre delivery Common Order made in
H.C.P.(MD)No.1076,1085 to
1087 of 2022**

15.03.2023