



*H.C.P(MD)No.688 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**  
and  
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

**H.C.P(MD)No.688 of 2023**

V.Velammal

.. Petitioner

VS

- 1.The State of Tamil Nadu,  
Represented by Additional Chief Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai – 600 009.
- 2.The District Collector/District Magistrate,  
Tirunelveli District,  
Tirunelveli.
- 3.The Superintendent,  
Central Prison,  
Palayamkottai,  
Tirunelveli District.
- 4.The Superintendent,  
District Jail,  
Perurani,  
Thoothukudi District.



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5. The Inspector of Police,  
Vicramansingapuram Police Station,  
Tirunelveli District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in Detention Order No.M.H.S.Confdl.No.51 of 2023 dated 21.05.2023 and to quash the same and direct the respondents to produce the body or person of the detenu, Vaithiyalingam @ Rasu, son of Ulagu @ Vellapandi, aged about 47 years, before this Court and set him at liberty, now detained as 'Goonda', District Jail, Perurani, Thoothukudi District.

For Petitioner : Mr.C.Saravana Kumar  
For Respondents : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

## ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 21.05.2023 bearing M.H.S.Confdl.No. 51 of 2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fifth respondent is the



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

2.Impugned preventive 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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.104 of 2023 on the file of Vickiramasingapuram Police Station for the alleged offences under Sections 147, 148, 341, 294(b), 307, 342, 324, 323 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of



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convenience and clarity] and subsequently, altered into Sections 147, 148, 341, 294(b), 307, 342, 324, 323, 506(ii) and 120-B of IPC and again altered into Sections 147, 148, 341, 294(b), 302, 342, 324, 323, 506(ii) and 120-B of IPC. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

4.Mr.C.Saravana Kumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.Captioned HCP was listed in the Admission Board before another Coordinate Hon'ble Division Bench on 13.06.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:



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CR  
21/05  
H.C.P(MD) No. 688 of 2023

R.SURESH KUMAR, J.  
AND  
K.K.RAMAKRISHNAN, J.

Admit.

Mr. A. Thiruvadi Kumar,

learned Additional Public Prosecutor  
takes notice for the respondents and  
seeks time for filing counter.

Post the matter after... 2 wks...

weeks.

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

13. 06 .2023

myr.



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6. Now in the final hearing Board today, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. To buttress this argument, learned counsel for petitioner drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order which reads as follows:

*'6..... I am also aware that in a similar case bail has been granted to Manikandan alias Mani in Cr.M.P.No.1805 of 2018 on 09.04.2018 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of Thiru.Vaithiyalingam alias Rasu coming out on bail in Vickiramasingsapuram Police Station Crime Number 104/2023; since bails are granted by the appropriate Courts in such cases. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial .....'*



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7.Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 09.04.2018 made in Cr.M.P.No.1805 of 2018 on the file of Principal Sessions Court, Tirunelveli' [hereinafter Manikandan @ Mani's bail order or Manikandan's bail order for the sake of brevity].

8.Learned counsel for petitioner submitted that Manikandan's bail order has been furnished to the detenu as part of the grounds booklet and a careful perusal of the same brings to light that in Manikandan's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Manikandan whereas in the case on hand, even according to the impugned preventive detention order there is atleast one adverse case. Therefore, the comparison is bad/flawed is learned counsel's say.

9.In response to the above argument, learned Prosecutor submitted to the contrary.



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10.Learned Prosecutor submitted that the alleged offences in

Manikandan's case and the ground case are broadly comparable.

11.We have carefully considered the rival submissions.

12.This Court has repeatedly held that as regards comparing a ground case with another case bail order it is not merely the alleged offences but it is the determinants/parameters which weighed in the mind of the bail Court for granting discretionary relief of bail. In this view of the matter, it is clear that in Manikandan's case one of the main determinants that has weighed in the mind of the bail Court to grant the discretionary relief of bail is that Manikandan did not have bad antecedents i.e., there was no previous case for Manikandan whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there is atleast one adverse case for the detenu. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. If such



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subjective satisfaction is flawed the consequence is the impugned preventive detention order gets vitiated and becomes liable for being dislodged in a habeas legal drill. This means that the impugned preventive detention order in the captioned HCP also deserves to be dislodged in the habeas legal drill on hand.

13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.05.2023 bearing M.H.S.Confdl.No.51 of 2023 made by the second respondent is set aside and the detenu Thiru.Vaithiyalingam @ Rasu, aged 47 years, son of Thiru.Ulagu @ Vellapandi, 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.)  
16.10.2023

Index : Yes/No  
Neutral Citation : Yes/No  
ps

***P.S: Registry to forthwith communicate this order to Jail authorities in District Jail, Perurani, Thoothukudi District.***



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- 1.The Additional Chief Secretary to the Government,  
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  - 2.The District Collector/District Magistrate,  
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  - 5.The Inspector of Police,  
Vicramansingapuram Police Station,  
Tirunelveli District.
  - 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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

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