



H.C.P.(MD) No.1289 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 08.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**H.C.P.(MD)No.1289 of 2022**

Punitha

... Petitioner / Mother of the Detenue

Vs.

1.The 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 / Judicial Magistrate,

Thiruvarur District, Thiruvarur.

3.The Superintendent of Prison,

Central Prison, Trichy.

...Respondents

**PRAYER:** 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 P.D.No.79 of 2022 dated 03.07.2022 on the



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file of the 2<sup>nd</sup> respondent herein and quash the same and direct the respondents to produce the detenu, Divakar, Son of Baskar, male, aged 26 years, who is detained at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.A.Joel Paul Antony

For Respondents : Mr.A.Thiruvadi Kumar,  
Additional Public Prosecutor

### **ORDER**

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner is the mother of the detenu, namely, Divakar, S/o.Baskar, aged about 26 years. The detenu has been detained by the 2<sup>nd</sup> respondent by his proceedings in P.D.No.79 of 2022 dated 03.07.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.This detention order has been passed based on the solitary case, where there are two accused, including the detenue for the alleged offences punishable under Sections 294(b) and 307 IPC. Pursuant to the said case,



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the detainee was arrested on 23.05.2022. Subsequently, this detention order has been passed against him on 03.07.2022. Challenging the same, the present Habeas Corpus Petition is filed.

3.Assailing the said order, the learned counsel appearing for the petitioner would submit that it is in fact a solitary case and there are two accused, including the detainee. However, the 2<sup>nd</sup> respondent has picked up only A2 ie., this detainee, against whom only the detention order has been passed, but A1 has been spared. That apart, insofar as the similar case theory adopted by the 2<sup>nd</sup> respondent that the detainee may also get bail and be released, is concerned, the learned counsel for the petitioner submitted that that was the case, where no injury has been reported, therefore, the Court might have taken a lenient view and released the accused therein in bail and that cannot be connected with the present case on hand. Therefore, the theory of similar case also cannot be applied on the facts of the present case, he contended.

4.We have heard the learned Additional Public Prosecutor appearing for the respondents, who would submit that, though it is a solitary



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case and there has been no adverse case or previous case against the detainee, since it was a gruesome attack made by the accused, the authorities in order to maintain the public order in the locality wanted to put him under the Goonda Act ie., Act 14 of 1982 and that is how the impugned order has been passed.

5.We have considered the submissions made by the learned counsel for both sides.

6.In *Vidya Vs. State of Tamil Nadu, rep. by the Additional Chief Secretary to Government and others* in *H.C.P.(MD)Nos.54 of 2021 etc batch dated 29.03.2021*, the Division Bench of this Court has dealt with the issue of sparing some accused and choosing some accused for the purpose of slapping the provisions of Act 14 of 1982, where the learned Judges have held as follows:-

*“9. In the instant case, it is an admitted fact that there are 11 accused in the ground case i.e. Natchiyarkovil Police Station Crime No.1320 of 2020, however, the impugned detention orders have been passed only as against the petitioners, when the other accused are also placed in same footing. In Chandra's case*



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(cited supra), it has been held that the Authorities cannot exercise their power arbitrarily for picking and choosing only some of the accused to clamp the order of detention. The relevant paragraph would run thus:

“10. It is the further contention raised on behalf of the petitioners that the equal protection clause shall be attracted against the orders of preventive detention as well. But, this court is of the considered view that the equal protection clause cannot be stretched further to be made applicable for quashing the orders of detention for not assigning reasons in the grounds of detention for the exclusion of others and selection of the detenus alone when the detaining authority choses the persons among the accused in the ground case to be clamped with the order of detention under the preventive detention law. However, we are of the view that there is some force in the contention that the exercise of power by the detaining authority to pass orders of detention against the detenus concerned in these HCPs alone can be challenged as being arbitrary. The arbitrariness pointed out on behalf of the petitioners is that though the detaining authority chose to consider the detenus concerned in these HCPs alone as a class out of the nine accused persons, who were arraigned as such in the first and third adverse cases and the ground case, there was no reasonable basis for such a



*classification to treat them differently from the rest of the persons. The said argument has been advanced on the ground that no reason has been assigned in the grounds of detention for selecting the above said three persons alone for being termed as goondas. We are of the considered view that it shall not be necessary on the part of the detaining authority to assign any reason in the grounds of detention as to why the other persons are not chosen for being detained under the preventive detention law. Suffice to state the satisfaction that the detenus are to be termed goondas and their presence at large will be detrimental to the maintenance of public order. But the same does not mean that the court while dealing with HCP challenging the order of detention, cannot go into the question of arbitrariness in such classification. When the order of detention is challenged on the ground of arbitrariness based on the classification of the detenus alone from the rest of the accused, it shall be the duty of the detaining authority and the State to establish reasonable basis of such classification to rule out arbitrariness. In this case, though the detaining authority cannot be found fault with for not assigning reason in the grounds of detention for selecting the detenus concerned in these HCPs alone for clamping the orders of detention leaving out the other accused in the ground case and the adverse cases, there is*



*failure on the part of the respondents herein to state the basis of such classification atleast before the court in these HCPs. The failure on the part of the respondents to assign reasons in their counter affidavit in these petitions as to why the detenus alone were selected for detention as goondas leaving out the other six persons will show that the exercise of the statutory power by the detaining authority was arbitrary especially when the left out persons were placed on equal footing with Murugan and Murali, the detenus concerned in H.C.P.Nos.2393 and 2404 of 2009 and found implicated in more number of cases than Rajendran, the detenu concerned in H.C.P.No. 2405 of 2009. Hence we are convinced that orders of detention challenged in these HCPs are vitiated on the ground of arbitrariness.”*

*10. In this case also, no explanation has been given by the respondents for passing detention order only against the detentu. So, we are of the opinion that the orders impugned in this habeas corpus petitions are liable to be set aside.”*

7. Here in this case also, there has been no acceptable explanation given by the 2<sup>nd</sup> respondent to invoke the provisions of Act 14 of 1982 only in respect of A2 ie., the detenu and not against A1. Moreover, the similar case theory adopted by the 2<sup>nd</sup> respondent also would not advance the case



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of the prosecution ie., the detaining authority, because in that case as pointed out by the learned counsel for the petitioner there was no injury.

8.Taking into consideration of the overall situation of the ground case, which is only a solitary case for the alleged offences under Sections 294(b) and 307 IPC, where the two grounds raised by the petitioner since has been accepted by this Court, we are of the view that the impugned detention order passed by the 2<sup>nd</sup> respondent in P.D.No.79 of 2022, dated 03.07.2022 can be set aside, accordingly, it is set aside. Therefore, this Habeas Corpus Petition is allowed. As a sequel, the 3<sup>rd</sup> respondent is hereby directed to set the detenue, namely, Divakar, S/o.Baskar, aged about 26 years, at free, if his presence in the jail is not required for any other cases.

**(R.S.K., J.) & (K.K.R.K, J.)**

**08.03.2023**

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

*MYR*



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To

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State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-600 009.
- 2.The District Collector / Judicial Magistrate,  
Thiruvarur District, Thiruvarur.
- 3.The Superintendent of Prison,  
Central Prison, Trichy.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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

*MYR*

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