



HCP(MD)Nos.852, 854 & 862 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

H.C.P.(MD)Nos.852, 854 & 862 of 2023

Hemalatha	: Petitioner in H.C.P.(MD)No.852/2023
Sasikumar	: Petitioner in H.C.P.(MD)No.854/2023
Raja @ Singhi Raja	: Petitioner in H.C.P.(MD)No.862/2023
Vs.	

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

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai District.

: Respondents in all HCPs



HCP(MD)Nos.852, 854 & 862 of 2023

WEB COPY

PRAYER in H.C.P.(MD)No.852 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records made in 23/BCDFGISSSV/2023 dated 12.04.2023 on the file of the second respondent and quash the same and consequently direct the respondents to produce the petitioner's son namely, "Siva @ Sivapriyan, S/o. Anandan, aged about 28 years" who is now detained as a detainee at Central Prison, Madurai, his corpus or body before this Court.

PRAYER in H.C.P.(MD)No.854 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records made in 25/BCDFGISSSV/2023 dated 13.04.2023 on the file of the second respondent and quash the same and consequently direct the respondents to produce the petitioner's son namely, "Vigneshwaran, S/o.Sasikumar, aged about 21 years" who is now detained as a detainee at Central Prison, Madurai, his corpus or body before this Court.

PRAYER in H.C.P.(MD)No.862 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to



HCP(MD)Nos.852, 854 & 862 of 2023

call for the records made in 26/BCDFGISSSV/2023 dated 13.04.2023 on the file of the second respondent and quash the same and consequently direct the respondents to produce the detenue namely, Raja @ Singhi Raja, S/o.Gopi, aged about 21 years before this Court.

For Petitioner : Mr.J.Sankara Pandian
[In all H.C.Ps.]

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
[In all H.C.Ps]

COMMON ORDER

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

This common order will govern the captioned three 'Habeas Corpus Petitions' ['HCPs in plural and HCP in singular' for the sake of brevity, convenience and clarity]. H.C.P.(MD)No.852 of 2023 shall be referred to as I HCP, H.C.P.(MD)No.854 of 2023 shall be referred to as II HCP and H.C.P.(MD)No.862 of 2023 shall be referred to as III HCP.

2.The detenues in the aforementioned three HCPs are co-accused in one ground case which constitutes a substantial portion of substratum of the impugned preventive detention orders. Therefore, we are making a common order.



HCP(MD)Nos.852, 854 & 862 of 2023

WEB COPY

3.I HCP has been filed by the mother of the detenu; II HCP has been filed by the father of the detenu; III HCP has been filed by the detenu, assailing the 'preventive detention orders dated 12.04.2023, 13.04.2023 and 13.04.2023 respectively, bearing reference No.23/BCDFGISSSV/2023, No.25/BCDFGISSSV/2023 and No.26/BCDFGISSSV/2023 respectively' [hereinafter 'impugned preventive detention orders' for the sake of brevity and convenience] made by the second respondent Commissioner of Police, Madurai City, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of V1 Thirupparankundram Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

4.Impugned preventive 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)'



HCP(MD)Nos.852, 854 & 862 of 2023

[hereinafter 'Act 14 of 1982' for the sake of convenience and clarity]
branding the detenus as 'Goonda' within the meaning of Section 2(f)
of Act 14 of 1982.

5.The impugned preventive detention orders have been passed based on a ground case in Crime No.74 of 2023 on the file of V1 Thirupparankundram Police Station against the detenus for the alleged offences under Sections 341, 294(b), 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into one under Sections 120-B, 147, 341, 294(b), 302 and 506(ii) of IPC. Considering the nature of the challenge to the impugned detention orders, it is not necessary to delve into the factual matrix of the case.

6.Today, Mr.J.Sankara Pandian, learned Counsel on record for petitioners and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents in all three HCPs are before us.

7.In the final hearing board, today, though very many points have been raised, learned Counsel for the petitioners drew our attention to a portion of the grounds of impugned preventive



HCP(MD)Nos.852, 854 & 862 of 2023

detention orders, wherein the detaining authority has relied on a bail order dated 04.01.2020 made in Crl.M.P.No.7049 of 2019 on the file of the Principal Sessions Judge, Madurai [hereinafter '**Periyasamy's** case' for the sake of convenience and clarity as Thiru.Periyasamy S/o. Chellapandi, is the petitioner in this bail order], for arriving at subjective satisfaction *qua* imminent possibility of detainees being enlarged on bail.

8. Learned Counsel adverting to **Periyasamy's** case bail order, which has been furnished to the detainees as part of the grounds booklet submitted that in **Periyasamy's** case, the parameters and determinants which weighed in the minds of the bail Court for granting bail are very different from the ground case.

9. Learned Counsel drew our attention to paragraph No.6 of **Periyasamy's** case bail order, wherein the bail Court ie., learned Principal Sessions Judge has made it clear that four determinants have weighed in the minds of the trial Court in granting the relief and they are as follows:

- a) The petitioner was in judicial custody for 80 days.
- b) Substantial part of investigation is over.



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

- c) Already one co-accused has been granted bail.
- d) There are no antecedents for the petitioner

[Periyasamy] in that case.

10. Learned Counsel submitted that none of these parameters will apply to the case on hand as all three detenues have been incarcerated for two months, the investigation was completed and charge sheet was filed in the trial Court only on 26.04.2023, after the impugned preventive detention orders were made and in all these cases there are multiple adverse cases against the detenues. In other words, on the date of making of the impugned preventive detention orders, the investigation was not over. To be noted, none of the co-accused were enlarged on bail. All the three accused have adverse cases and the details of the adverse cases have been set out in the impugned preventive detention orders.

11. Setting out this aspect of the matter, learned Counsel submitted that the subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of the detenues being enlarged on bail is clearly impaired.



12. In response to the aforementioned arguments, learned Additional Public Prosecutor submitted that the alleged offence in **Periyasamy's** case and the ground case are broadly comparable.

13. We carefully considered the rival submissions.

14. This Court has repeatedly held that when it comes to subjective satisfaction of the detaining authority as regards imminent possibility of detainees being enlarged on bail it is not just comparison of the alleged offence but it is also comparison of determinants/parameters for grant of bail which is a discretionary relief in law.

15. In the case on hand, we find one striking difference between **Periyasamy's** case bail order and the ground case and that striking difference is there is no adverse case or no antecedents in **Periyasamy's** case, whereas in the case on hand all three detainees have adverse cases ie., antecedents even according to the impugned preventive detention orders. The details of the adverse cases have been captured in the impugned preventive detention orders and the same are as follows:



HCP(MD)Nos.852, 854 & 862 of 2023

WEB COPY

I HCP:

No.23/BCDFGISSW/2023

Office of the
Commissioner of Police,
Madurai City, Madurai.
Dated : 12.04.2023.

Sub: 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 14/1982) - Detention of Siva @ Sivapriyan, male, aged 28/2023, s/o, Anandan, Ilakkuvanar 2nd Street, Thirunagar, Madurai under Section 3 (1) of the Act - Grounds of detention.

Siva @ Sivapriyan, male, aged 28/2023, s/o, Anandan, Ilakkuvanar 2nd Street, Thirunagar, Madurai has come to adverse notice in the following cases:-

Sl. No.	Police station and Cr. No.	Section of Law	Disposal / Present stage of the case.
I.	W1 Thirunagar PS Cr.No 119/2021	294 (b), 341, 307, 109 IPC altered into section 109, 294 (b), 307, 341, 34 IPC and section 25 (1-A) Arms Act 1959.	Swathi w/o.Anand is residing at 48, Mahatma Gandhi Street located near Vasanth School, SRV Nagar, Madurai. On 04.04.2021, at about 1500 hrs. Swathi and her husband Anand were moving near the bridge located near the above said school, to go to their house, after visiting Thirunagar. At that time, Siva @ Sivapriyan, Tamilarasan @ Avatia Tamilarasan and Vigneshwaran, known on enquiry, who came there on a two-wheeler, waylaid the husband of Swathi, questioned him as to how he could speak in a wrong manner about the wife of their friend Mottamalai Sakthirajan and hence Sakthiraja sent them to murder him. Siva @ Sivapriyan attacked Swathi's husband on his head and right hand with a aruval in his possession causing bleeding injury. On seeing this, Raja, Sundar and Surya, who were available nearby, came there and prevented them. Siva @ Sivapriyan attacked Raja with aruval.

செய்தியை உறுதிப்படுத்தி
கொடுக்கப்பட்டிருக்கிறது
மதுரை காவல்துறை
12.4.23

Read over and exhibited to him
Signed by me
Jailor
Central Prison, Madurai.



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

-2- 17

As Raja prevented the attack with his right hand, he sustained injury near right wrist. Thereafter the said trio escaped from there. Immediately, Swathi took her husband and Raja in an auto-rickshaw to Government Hospital, Thirupparankundram, gave first aid and sent them to Government Rajaji Hospital, Madurai for further treatment. In this connection, on the complaint of Swathi, an FIR was registered.

In this case, Vigneshwaran s/o. Sasikumar, Siva @ Sivapriyan s/o. Anandan and Tamilarasan @ Avutha Tamilarasan were arrested on 07.04.2021, confession of Siva @ Sivapriyan was recorded, this case property aruval was seized from him and remanded to judicial custody.

In this case, Vigneshwaran s/o. Sasikumar was granted conditional bail by the Principal Sessions Judge, Madurai in Cr.MP No. 2343/2021 on 16.04.2021. Final report has been filed in this case and the same is pending trial before the court concerned in SC.No.403/2022.

Udhayakumar s/o.Chandrasekar is residing at 6/1, Balaji Street, Pamban Nagar, Thirupparankundram, Madurai. On 06.03.2022, at morning 1000 hrs. when he was standing with his two-wheeler at Thirupparankundram-Avanliyapuram junction, Karthick, Vigneshwaran, who were well known to him, came there, threatened to give money for their expenses.

ii. V1 392, 307
Thirupparan 392, 307
kondram IPC,
(Crime) PS
Cr.No.
109/2022

பேரவையுள்ள சிபிஐ இலிருந்து
பெறப்பட்ட தகவல் பற்றி விசாரணை
செய்யப்பட்டு வருவது உறுதிப்படுத்தப்பட்டுள்ளது.
செய்தியைத் தயார் செய்த
தேன்மலை நீதிமன்றம்

Read over and explained to him
Signed by me
Central Prison, Madurai



HCP(MD)Nos.852, 854 & 862 of 2023

WEB COPY

-3-

1-3

Under the above context, on 20.01.2022 at about 1900 hrs, when Thanish and Sarathy, working in Anandan's shop were available in the said shop. Siva @ Sivapriyan, son of Anandan and Madhan, known on enquiry, came to the shop, on the instigation of Hemalatha, wife of Anandan, ransacked the shop due to above said previous enmity with a big sword and threatened them saying they would murder their proprietor and damaged the glass pane of a car (TN 58 AL 3783 Nissan) parked near Seethalakshmi School and tried to attack Maheswaran s/o Sarangapandi, who was standing there, after threatening him. As he bent down, he escaped from the attack. Thereafter, the said persons left from there. In this regard, based on the complaint of Anandan, an FIR was registered.

In this case Madhan s/o Vadivel and Siva @ Sivapriyan were arrested on 21.01.2022 remanded to judicial custody. In this case, Siva @ Sivapriyan s/o Anandan was granted conditional bail by the Judicial Magistrate No.6, Madurai in Cr.MP.No.97/2022 on 25.01.2022. Final report has been filed in this case and the same is pending trial in CC No.1285/2022.

III. W1 147, 148,
Thirunagar 284 (b), 307,
PS Cr No. 324, 34 IPC,
227/2022

Krishnamoorthy s/o Balamurugan is residing at 164, Harvipatti, Thirunagar, Madurai. On 03.07.2022 at 1730 hrs, Krishnamoorthy bought liquor from a wine shop at Chandrapalayam and when he was moving in front of Bel Bunglow located in Sivan Kovil Street, Harvipatti, Abbas @ Akash, Raja @ Singa, Raja

செய்து கொடுத்திருக்கிறார். இவரின் புகாரின் பேரில் காவல்துறை போலீஸார் இவரை கைது செய்து, அவரை மதுரை மத்திய சிறையில் அடைத்தனர்.

சிறை, அ
17.1.22
17.1.22

சிறைக்கு அனுப்பப்பட்டார். இவரை கைது செய்து, அவரை மதுரை மத்திய சிறையில் அடைத்தனர்.
Jailor
Central Prison, Madurai.



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

4

19

Sujai, Sarath @ Kedi Sarath, Siva @ Sivapriyan followed him and Abbas @ Akash attacked Krishnamoorthy with a sword, due to previous enmity in drunken brawl between them. Krishnamoorthy prevented the attack with his right hand and sustained a big cut wound on his right hand. Sarth and Siva @ Sivapriyan pushed down Krishnamoorthy. Raja @ Singhi Raja and Sujai sat on Krishnamoorthy and attacked on his head and back with beer bottle in their possession and hence Krishnamoorthy sustained bleeding injuries. As Krishnamoorthy raised alarm, the nearby persons rushed there. At that time, the said 5 persons moved away from there after threatening Krishnamoorthy with murder. Thereafter, Krishnamoorthy with the help of those available nearby boarded in an auto-rickshaw, went to Government Hospital, Thirupparankundram and took first aid. From there, he went to the Government Rajaji Hospital, Madurai and admitted as inpatient in Ward No.99 for further treatment. On information, the police personnel of Thirunagar PS went there and obtained the complaint statement of Krishnamoorthy. Based on that, an FIR was registered.

In this case, Siva @ Sivapriyan was arrested on 06.07.2022 remanded to judicial custody. In this case, Siva @ Sivapriyan s/o. Anandan was granted conditional bail by the Principal Sessions Judge, Madurai in CrI MP No. 3541/2022 on 10.08.2022. Final report has been filed in this case and the same is pending trial in SC No.83/2023.

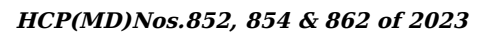
22

Stamp by Jg.

Judge

Central Prison, Madurai.

23 08.17.22



Correspondence: Michael



HCP(MD)Nos.852, 854 & 862 of 2023

WEB COPY

III HCP:

NO.26/BCDFGSSSV/2023

Office of the
Commissioner of Police,
Madurai City, Madurai.
Dated : 13.04.2023.

37

Sub: 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 14/1982) - Detention of Raja @ Singhi Raja, male, aged 21/2023, s/o. Gopi, 32/1, Viswakarma Nagar 1st Street, Thenparankundram, Thirupparankundram, Madurai under Section 3 (1) of the Act - Grounds of detention.

Raja @ Singhi Raja, male, aged 21/2023, s/o. Gopi, 32/1, Viswakarma Nagar 1st Street, Thenparankundram, Thirupparankundram, Madurai has come to adverse notice in the following cases:-

Sl. No.	Police station and Cr. No.	Section of Law	Disposal / Present stage of the case.
I.	V1 Thirupparankundram PS Cr.No. 168/2022	341, 294 (b), 506 (ii) IPC and section 3 Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 altered into section 341, 294 (b), 506 (ii) IPC and section 3 Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 r/w 34 IPC and section 83 (2) the Juvenile Justice (Care and Protection of Children) Act, 2015	Shanmugavel s/o.Bojaiah is residing at 173, SRV Nagar, Thirunagar, Madurai. On 26.04.2022, he went to St.Charless Higher Secondary School located in Thiruvalluvar Nagar for driving the school bus, as his friend and school bus driver Siva took leave. He took the school bus bearing No.TN 58 BB 1648 from the school after boarding the children, at about 1720 hrs, he was moving on the bus near Thenparankundram Thevar Statue located on Thirupparankundram Girivalapathai for alighting them. At that time, Dheena @ Dhinakaran s/o. David Raja, Raja @ Singhi Raja s/o.Gopi and Nagarajan s/o. Manimuthu of Thenparankundram, known on enquiry waylaid the bus. Shanmugavel stopped the bus by moving some distance. Immediately, Dheena @ Dhinakaran came to him, questioned him as to why he was not stopping the bus immediately and

Read over and explained to him
Served by
Jailor
Central Prison



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

-2-

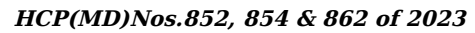
scolded him using filthy words. Further, Dheena @ Dhinakaran, Raja @ Singhi Raja took a stone each and attacked on the front glass of the bus and damaged it. Nagaraj pelted a stone on Shanmugavel. As Shanmugavel moved away, the stone did not fall on him. The school children inside the bus panicked and hid inside. On seeing this, those available there tried to secure them. The said persons threatened them saying if any one came closer, they would stab with the stone. Due to which, those present there ran helter-skelter out of fear. At this juncture, the bus moved away from there. In this regard, on the complaint of Shanmugavel, an FIR was registered.

In this case, Raja @ Singhi Raja s/o.Gopi was arrested on 27.04.2022, his confession was recorded and 3 stones were seized under athachit and remanded to judicial custody. In this case, Raja @ Singhi Raja s/o.Gopi was granted conditional bail by the Vacation Sessions Judge, Madurai in Cr.MP No.303/2022 on 19.05.2022. Final report has been filed in this case and the same is pending trial in PRC No.288/2022.

தலைவர், மதுரை மத்திய சிறை
காவலர் கமிஷன், திருச்சி
பெரிய காவலர் அலுவலகம்
மதுரை மத்திய சிறை
மதுரை-625 005

தேதி: 14.4.23 அண்மை: 16.25

Read over and explained to him.
Served by me,
Jailer,
Central Prison, Madurai



Read over and explained to him.
Served by one of
Jailer
Central Prison, Madurai.

<https://www.mhc.tn.gov.in/judis>



WEB COPY

16.In the light of the narrative, discussion and dispositive reasoning, we have no hesitation in accepting the argument of the learned Counsel for the petitioner that subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of the detenues being enlarged on bail is clearly impaired. This means that the impugned preventive detention orders ie., all three impugned preventive detention orders deserve to be dislodged in these habeas legal drills on hand.

17.Ergo, the sequitur is:

i) Captioned I HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference 23/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Siva @ Sivapriyan, son of Thiru.Anandan, aged 28 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

ii) Captioned II HCP is allowed. Impugned preventive detention order dated 13.04.2023 bearing reference 25/BCDFGISSSV/2023 made by the second



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

respondent is set aside and the detenu Thiru.Vigneshwaran, son of Thiru.Sasikumar, aged 21 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

iii) Captioned III HCP is allowed. Impugned preventive detention order dated 13.04.2023 bearing reference 26/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Raja @ Singhi Raja, son of Thiru.Gopi, aged 21 years, 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.K.M.,J.]

05.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

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



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

To

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai District.

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



WEB COPY



HCP(MD)Nos.852, 854 & 862 of 2023

M.SUNDAR, J.
and
R.KALAIMATHI, J.

MR

COMMON ORDER MADE IN
H.C.P.(MD)Nos.852, 854 & 862 of 2023

05.10.2023