



HCP(MD)Nos.952 & 1101 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.952 & 1101 of 2023

G.Suryakalarani

: Petitioner in H.C.P.(MD)No.952/2023

Sarasu

: Petitioner in H.C.P.(MD)No.1101/2023

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 Magistrate and District Collector,

O/o. The District Magistrate and District Collector,
Karur District,
Karur.

3.The Superintendent,

Central Prison,
Tiruchirappalli District.

: Respondents in all HCPs



HCP(MD)Nos.952 & 1101 of 2023

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PRAYER in H.C.P.(MD)No.952 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records in detention order passed in Cr.M.P.No. 10/2023 dated 12.04.2023 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Sanjai @ Sanjaikumar S/o.Gopinath, male aged 21 years, who is detained in Central Prison, Tiruchirappalli.

PRAYER in H.C.P.(MD)No.1101 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 of the second respondent in Cr.M.P.No.09/2023 dated 12.04.2023 and quash the same and to direct the respondents to produce the body or person of the detainee by name Pencil @ Tamilalagan Son of Manoharan, aged about 28 years now confining as “Goonda” at Trichy Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.K.A.S.Prabhu
[In H.C.P.(MD)No.952/23]
For Petitioner : Mr.B.Micheal Sebastin
[In H.C.P.(MD)No.1101/23]
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 two 'Habeas Corpus Petitions' ['HCPs in plural and HCP in singular' for the sake of brevity, convenience and clarity]. H.C.P.(MD)No.952 of 2023 shall be referred to as I HCP and H.C.P.(MD)No.1101 of 2023 shall be referred to as II HCP.

2.The detenues in the aforementioned two 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.



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3.Both I and II HCPs have been filed by the mothers of the respective detenus assailing the 'preventive detention orders dated 12.04.2023 bearing reference Cr.M.P.No.10/2023 and Cr.M.P.No. 09/2023 respectively' [hereinafter 'impugned preventive detention orders' for the sake of brevity and convenience] made by the second respondent District Collector, Karur District, 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 Karur Town 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)' [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.



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5.There are two adverse cases. The impugned preventive detention orders have been passed based on a ground case in Crime No.114 of 2023 on the file of Karur Town Police Station against the detainees for the alleged offences under Sections 294(b), 449, 506(ii) and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.K.A.S.Prabhu, learned Counsel on record for petitioner in I HCP, Mr.B.Micheal Sebastin, learned Counsel on record for petitioner in II HCP and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents in both 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 detention orders, wherein the detaining authority has relied on a bail order dated 04.02.2019 made in CrI.M.P.No.61 of 2019 on the file of



the Principal and Sessions Judge, Dindigul [hereinafter '**Mallees's** case' for the sake of convenience and clarity as Thiru.Mallees Murugan S/o.Krishnan, is the petitioner in this bail order], for arriving at subjective satisfaction *qua* imminent possibility of detenues being enlarged on bail.

8.Learned Counsel adverting to **Mallees's** case bail order, which has been furnished to the detenues as part of the grounds booklet submitted that in **Mallees'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 **Mallees's** case bail order, which bring to light that the bail Court ie., learned Principal and Sessions Judge has *inter-alia* applied four determinants in granting the relief and they are as follows:

- a) The petitioner was in judicial custody for 82 days.
- b) Substantial part of investigation is over.
- c) Already one co-accused has been granted bail.
- d) There are no antecedents for the petitioner

[Mallees Murugan] in that case.



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10. Learned Counsel submitted that none of the aforementioned parameters will apply to the case on hand as both the detenues have been incarcerated for two months, the investigation was completed and charge sheet was filed in the trial Court only on 28.04.2023, after the impugned preventive detention orders were made and in both 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. Both the detenues 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 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 ***Mallees's*** case and the ground case are broadly comparable.



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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 detenues 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 ***Mallees's*** case bail order and the ground case and that striking difference is there is no adverse case or no antecedents in ***Mallees's*** case, whereas in the case on hand both the detenues 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:



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I HCP:

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Cr.M.P.No.10/2023

Office of the
District Magistrate and
District Collector,
Karur District, Karur
Dated: 13-04-2023

(16)

GROUNDS OF DETENTION

Sub: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Seed Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act 1982 (Tamil Nadu Act 14 of 1982) Detention of **Sanjai @ Sanjai Kumar**, male, aged 21/2023, S/o.Gopinath, No.74-D, Mavadiyan Kovil Street, Karur Town, Karur Taluk, Karur District - under section 3(i) of the said Act - Grounds of Detention.

Sanjai @ Sanjai Kumar, male, aged 21/2023, S/o.Gopinath, No.74-D, Mavadiyan Kovil Street, Karur Town, Karur Taluk, Karur District is a 'Goonda'. He has come to adverse notice and involved in the following cases:-

1) Karur Town police station Cr.No.203/2022 u/s.294(h), 324 and 506(ii) IPC @ 294(h), 394, 506(ii) IPC

On receipt of intimation from Outpost Police Station, Government Medical College Hospital, Karur, Thiru.P.Muthuchamy, Head Constable 1081 of Karur Town Police station went there on 14.03.2022, enquired one by name Thiru.Praveen, aged 25/2022, S/o.Venugopal, Neikara Street, Karur and recorded his complaint statement. In the complaint statement, he stated that he is residing in the above said address with family, working as Tailor in 'Malik Tailors' situated near Sumathi Sweet Stall, Karur. Further, he stated that on 13.03.2022 at 22.15 hrs, he went to 'Chellappa Mens' situated in Malikal paathai, Karur to purchase dinner. At that time, two known persons namely Pencil @ Tamilalagan, a resident of M.G.R. Nagar, Chinnandankovil, Karur and Sanjai @ Sanjaikumar, a resident of Mavadiyan kovil street, Karur intercepted the complainant and demanded money to consume liquor. The complainant refused to give money. Aggrieved over

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that, above said Pencil @ Tamilalagan and Sanjai @ Sanjaikumar scolded the complainant with filthy words and then Pencil @ Tamilalagan took a knife and stabbed on his left hand palm and chest. Sanjai @ Sanjaikumar took a beer bottle from the ground and attacked the complainant on his right side head severely. On getting blood injury, the complainant shouted with panic. On hearing his shout, few persons came for his help. On knowing their arrival, above said Pencil @ Tamilalagan and Sanjai @ Sanjaikumar showed knife and beer bottle before the complainant and shouted that they would kill him if he refused to give money for them and then throw the weapons on the ground and fled away. The complainant informed the matter to his relative, who is residing near 'Bombay Sweet Stall', came to Government Medical College Hospital Karur through 108 Ambulance and admitted as inpatient. The complainant preferred his complaint statement to the police official who enquired him in the hospital. On his complaint statement, a case was registered in Karur Town police station Cr.No.203/2022 u/s.294(b), 304 and 506(ii) IPC, and after enquiry altered to u/s.294(b), 394, 506(ii) IPC. In this case, accused Sanjai @ Sanjaikumar was arrested on 18.03.2022 and he filed bail petition before the Court of the Sessions Judge, Karur vide CH.M.P.No.722/2022 and bail was granted on 05.04.2022. This case was charge sheeted before the Court of Judicial Magistrate No.1, Karur on 25.04.2022 and not yet taken on enquiry.

2) Karur Town police station Cr.No.5142022 u/s 341, 294(b), 307 and 397 IPC
@ 294(b), 307, 34, 341, 397 IPC

Thiru.M.Ramasamy, aged 75/2022, S/o,Maruthu Gounder, Old No.62, New No.18, T.Chellandipalayam, Thonnakkuppatti, Karur District appeared in Karur Town police station on 24.07.2022 at 09.00 AM and preferred a written complaint. In the complaint, he stated that he is residing in the above said address with family, having a son and two daughters, all are married and living separately, he is residing with his wife Pappayee. Further, he stated that his son Senthilkumar running a Grocery & Vegetable shop at Chellandipalayam and he used to go to Kamandi Market, Karur in the early morning for purchase of Vegetables. Meanwhile, on 24.07.2022, the complainant's son Senthilkumar went to Kamandi Market and

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purchased vegetables and was returning in his TVS XL Super two wheeler bearing registration number TN47-AJ-4152. The complainant and his son-in-law Subramanian also followed him in another one two wheeler. At about 04.50 hrs, when they went near Makkal Panchai Roadside, few persons subsequently known as 1)Mohamraj, S/o.Mamikandan, Amirthambal Nagar, Athur, Karur 2)Udhayaprakash, S/o.Uthirapathi, Mavadiyan Kovil Street, Idargu Lane, Karur 3)Hansel, S/o.Ajis, East Vanjiyemman kovil street, Karur 4) Sanjai @ SanjaiKumar, S/o.Gopinath, Mavadiyan Kovil Street, Karur intercepted Senthilkumar's vehicle, scolded with filthy language and demanded money from him. Mohamraj showed a knife before the complainant and asked to give money and mobile phone and others threatened him with dire consequences. Mohamraj stabbed on the back of Senthilkumar with a knife. By that, Senthilkumar fell down on the ground. Above said Udhayaprakash and Sanjai @ SanjaiKumar looted Rs.1,200/- from complainant's shirt pocket and mobile phone forcibly. On seeing their atrocities, the complainant and his son-in-law Subramanian rushed and shouted loudly. But above said Sanjai @ SanjaiKumar and others showed knife before them and threatened with dire consequences and fled away with looted money and mobile phone. The complainant and Subramanian brought Senthilkumar to Government Medical College hospital, Karur for treatment and he was referred to Karur Apollo Hospital and then to Coval Medical Centre Hospital, Coimbatore for further treatment. The complainant came to Karur Town police station and preferred a written complaint with a request to take appropriate action. On complaint, a case was registered in Karur Town police station Cr.No.514/2022 s/s.341, 294(b), 307 and 397 IPC and altered to 341, 294(b), 307, 397 IPC s/w 34 IPC. In connection with Karur Town police station Cr.No.514/2022 s/s.341, 294(b), 307 and 397 IPC @ 341, 294(b), 307, 397 IPC s/w 34 IPC, accused Sanjai @ SanjaiKumar was arrested on 05.08.2022 and he filed bail petition before the Court of the District Sessions Judge, Karur vide Cr.M.P.No.1767/2022 and bail was granted on 27.09.2022. This case was charge sheeted before the Court of Judicial Magistrate No.1, Karur on 19.09.2022 and is pending vide P.J.C.No.10/2023.

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to consume liquor. The complainant refused to give money. Aggrieved over this, above said Pencil @ Tamilalagan and Sanjai @ Sanjaikumar scolded the complainant with filthy words and then Pencil @ Tamilalagan took a knife and stabbed on his left hand palm and chest. Sanjai @ Sanjaikumar took a beer bottle from the ground and attacked the complainant on his right side head severely. On getting blood injury, the complainant shouted with panic. On hearing his shout, few persons came for his help. On knowing their arrival, above said Pencil @ Tamilalagan and Sanjai @ Sanjaikumar showed knife and beer bottle before the complainant and shouted that they would kill him if he refused to give money for them and then throw the weapons on the ground and fled away. The complainant informed the matter to his relative, who is residing near 'Bombay Sweet Stall', came to Government Medical College hospital Karur through 108 Ambulance and admitted as inpatient. The complainant preferred his complaint statement to the police official who enquired him in the hospital. On his complaint statement, a case was registered in Karur Town police station Cr.No.203/2022 u/s.294(b), 324 and 306(ii) IPC, and after enquiring altered to 294(b), 394, 306(ii) IPC. In this case, accused Pencil @ Tamilalagan was arrested on 18.03.2022 and he filed bail petition before the Court of the Sessions Judge, Karur vide Cr.M.P.No.723/2022 and bail was granted on 05.04.2022. This case was charge sheeted before the Court of Judicial Magistrate No.1, Karur on 25.04.2022 and not yet taken on enquiry.

2) Karur Town Police station Cr.No.612/2022 u/s.341, 294(b) and 307 IPC

On receipt of intimation from Government Medical College hospital, Karur, Tmt.R.Hanumathi, Women Sub-Inspector of Police, Karur Town Police station went there on 08.04.2022, enquired one by name Thiru.Dinakaran, aged 32/2022, s/o Vaidya, No.37, Thanthool Kudil street, Sarvagate, Karur and recorded his complaint statement. In the complaint statement, he stated that he is residing in the above said address, working as acting driver, having two daughters. Further, he stated that on 07.09.2022, he went to Vennaimalai to participate in a marriage and returned in an Omni van bearing registration number TN47 E 7980 along with a friend by name Rajendran. When they came near Mukkal Paathai, Roundabout at

[Handwritten signatures and stamps are visible at the bottom of the page.]



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about 03.00 hrs, two unknown persons subsequently learned as 1) Pencil @ Tamilalagan, a native of Chinnandankovil, Karur 2) Surya @ Thalambu Surya, a resident of Makkal Pazhal intercepted the van and quarreled with the complainant for over speed. The complainant tried to pacify them, but they shouted that they are having many criminal cases on them and also attacked him with sticker knives on complainant's neck and right hand. On seeing their act, above said Rajendran tried to stop their attack. But above said Pencil @ Tamilalagan and Surya @ Thalambu Surya showed knives before him and threatened with dire consequences. On fear, Rajendran ran away from them. On pain, the complainant shouted with panic. On hearing his shout, few passerby came there for help. On seeing their arrival, above said Pencil @ Tamilalagan and Surya @ Thalambu Surya escaped from there with knives. The complainant informed the matter to his family and came to Government Medical College Hospital, Karur and admitted as inpatient for treatment. The complainant preferred his complaint statement to the police Sub Inspector who enquired him in the hospital. On his complaint statement, a case was registered in Karur Town police station Cr.No.612/2022 u/s 341, 294(b), 307 IPC. In connection with Karur Town police station Cr.No.612/2022 u/s 341, 294(b), 307 IPC, accused Pencil @ Tamilalagan was arrested on 08.09.2022 and he filed bail petition before the Court of the Hon'ble Madurai Bench of Madras High Court, Madurai vide Cr.O.P.(MD) No.18882/2022 and bail was granted on 20.10.2022. This case was charge sheeted before the Court of Judicial Magistrate No.1, Karur on 22.09.2022 and is pending vide P.R.C.No.08/2023.

2) A detention order under section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Serial Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act 1982 (Tamil Nadu Act 14 of 1982) has been made against Pencil @ Tamilalagan, male, aged 28/2023, S/o.Manchuran, No.29/19, M.G.R. Nagar, Chinnandankovil, Karur District vide Detention Order No.09/2023 dated 19.04.2023.

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2023-04-19/23



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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 petitioners 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., both 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 Cr.M.P.No.10/2023 detenu Thiru.Sanjai @ Sanjaikumar, son of Thiru.Gopinath, aged 21 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 12.04.2023 bearing reference Cr.M.P.No.09/2023 made by the second respondent is set aside and the detenu Thiru.Pencil @



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Tamilalagan, son of Thiru.Manoharan, aged 28 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, Tiruchirappalli.



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To

- 1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Karur District,
Karur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)Nos.952 & 1101 of 2023

M.SUNDAR, J.

and

R.KALAIMATHI, J.

MR

COMMON ORDER MADE IN
H.C.P.(MD)Nos.952 & 1101 of 2023

05.10.2023