



H.C.P(MD)No.1123 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**  
and  
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

**H.C.P(MD)No.1123 of 2023**

P.Krishnaveni

... Petitioner

vs.

1. The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Government of Tamil Nadu,  
Secretariat, Chennai – 9.
2. The Commissioner of Police,  
O/o. The Commissioner of Police,  
Madurai City.
3. The Superintendent,  
Central Prison, Madurai.

... Respondents

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 2<sup>nd</sup> respondent in No. 46/BCDFGISSSV/2023 dated 08.06.2023 and to quash the same and direct the respondents to produce the body or person of the detenu Manoj Siva @ Manoj son of Pandiyarajan, aged about 23 years before the Court and set him at liberty, now detained as 'Goonda' at Central Prison, Palayamkottai.



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For Petitioner : Mr.R.Boopathi

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

## **ORDER**

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

In the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] a 'preventive detention order dated 08.06.2023 bearing reference No.46/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by 'the second respondent Commissioner of Police', [who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity] has been assailed by the mother of the detenu.

2. Impugned 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] branding the detenu as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. In captioned HCP *Rule Nisi* was issued by a Hon'ble Predecessor Bench on 08.09.2023 and today, it is in the final hearing board.

4. In the support affidavit qua captioned HCP, several points have been raised but Mr.R.Boopathi, learned counsel for HCP petitioner posited his challenge to 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 impaired. In this regard, learned counsel drew our attention to a portion of paragraph No.5 of the impugned preventive detention order which reads as follows:

*'..... I am also aware that bail was granted by the Principal Sessions Judge, Madurai in Crl.M.P.No. 5309/2021 on 2.11.2021 to one accused Boopathi @ Boopathi Ragavendra s/o. Palanivel concerned in the case in D3 Koodalputhur PS Cr.No.494/2021 u/s 392, 397 and 506(ii) IPC and 25(1)(a), 27(1) Arms Act 1959, which is a case similar to that of the said ground case.....'*



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5. Adverting to the aforementioned extracted portion, learned counsel drew our attention to Boopathi's case bail order (bail order dated 02.11.2021 in CrI.M.P.No.5309 of 2021 on the file of Principal Sessions Judge, Madurai), which has been furnished to the detenu as part of the grounds booklet.

6. Adverting to paragraph No.8 of the Boopathi's case bail order, learned counsel submitted that the primary parameter, in other words, the paramount parameter for the bail Court was that the co-accused were granted bail in Boopathi's case but such a determinant is not available in the case on hand qua the ground case. Therefore the comparison is flawed is learned counsel's say.

7. In reponse to the aforementioned argument, learned Prosecutor submitted that the alleged offences in the ground case and Boopathi's case are broadly comparable.

8. We carefully considered the rival submissions.



9. We have repeatedly held that as regards similar case point in preventive detention jurisprudence, it is not merely comparison of the alleged offences but it is a comparison of the parameters and determinants which has weighed in the mind of the bail Court more so as bail is the discretionary relief. We noticed from the case file that bail has actually been granted in the ground case on the date of the impugned preventive detention order itself i.e., on 08.06.2023 by the Principal Sessions Judge, Madurai in Crl.M.P.No.3028 of 2023 but we are only testing the subjective satisfaction. To be noted, this is in the unique facts and circumstances of this case and therefore, it should not serve as a precedent in all cases of similar case bail order point.

10. In this view of the matter, we find that the unique determinant in Boopathi's case is not available qua the ground case and therefore, in the light of the facts and circumstances of the case on hand, considering the trajectory the matter has taken, we sustain the argument of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority in the impugned preventive detention order i.e., subjective satisfaction as regards imminent possibility of detenu being enlarged on bail is flawed. This means that the impugned preventive



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detention order is vitiated and has become vulnerable i.e., liable for being dislodged in the habeas legal drill on hand.

11. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 08.06.2023 bearing reference No. 46/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Manoj Siva @ Manoj, Male, aged 23 years, son of Thiru.Pandiyarajan 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.)  
17.11.2023

Index : Yes / No  
Neutral Citation : Yes / No  
PKN

**P.S:**

**(i) Upload forthwith.**

**(ii) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.**



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To

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Home, Prohibition and Excise Department,  
Government of Tamil Nadu,  
Secretariat, Chennai – 9.
2. The Commissioner of Police,  
O/o. The Commissioner of Police,  
Madurai City.
3. The Superintendent,  
Central Prison, Madurai.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Joint Secretary to Government,  
Public (Law and Order) Department,  
Secretariat, Chennai.



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

PKN

**ORDER MADE IN**  
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**DATED : 17.11.2023**