IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

Crl.M.P.No.5340 of 2020
in Crl.M.P.No.3983 of 2020 in H.C.P.No.747 of 2020
and Crl.M.P.Nos.4337, 4338, 4340, 4341, 4344 and 4366 of 2020
in H.C.P.Nos.648, 649, 650, 656, 711 and 712 of 2020

Crl.M.P.No.5340 of 2020
in Crl.M.P.No.3983 of 2020
in H.C.P.No.747 of 2020 :

1. The Government of Tamil Nadu
   Represented by its Secretary,
   Home, Prohibition and Excise Department,
   Fort St. George,
   Chennai-600 009.

2. The District Collector and
   District Magistrate,
   Karur District, Karur. .. Petitioners/Respondents

Vs

S.Indramoorthy .. Respondent/Petitioner

* * *

Prayer in Crl.M.P.No.5340 of 2020 : Petition filed under Article 226 of the Constitution of India praying to recall the order passed in Crl.M.P.No.3983 of 2020 in H.C.P.No.747 of 2020, dated 15.06.2020 as devoid of merits.

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For Petitioners in Crl. M.P.No.5340/2020/ Respondents in all other Crl.M.Ps	:	Mr.Prathap Kumar Additional Public Prosecutor
For Respondent in Crl. M.P.No.5340/2020 & For Petitioners in Crl. M.P.Nos.4338, 4340, 4341 & 4344/2020	:	Mr.R.Sankara Subbu
For Petitioners in Crl. MP Nos.4366 & 4337/2020	:	Mr.S.Doraiswamy, Senior Counsel for Mr.M.Mod.Saifulla

COMMON ORDER

PUSHPA SATHYANARAYANA, J.

Since the question arises for consideration in all these miscellaneous petitions is one and the same, with the consent of the learned counsel on either side, they are heard together and disposed of by means of this common order.

2. The State of Tamil Nadu has filed the miscellaneous petition in Crl.M.P.No.5340 of 2020 seeking to recall the order dated 15.06.2020 passed in Crl.M.P.No.3983 of 2020 in H.C.P.No.747 of 2020, wherein, the following directions were issued :

> "5. We are not prima facie convinced with these two points because the representation of the detenu cannot be examined in a microscopic manner as the detenu is under detention pursuant to an action initiated by the Sponsoring Agency/Authority. Therefore, unless and until the detenu has clearly and candidly given up his right of personal appearance, no adverse inference can be drawn against the

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detenu. Furthermore, the Agency/Authority, who sponsored the detention of the detenue, is not the petitioner in this petition. Since this is a case of preventive detention, the Sponsoring Authority should have made alternate arrangements so as to be present before the Advisory Board to place all the materials. Even assuming for argument sake that the learned Additional Public Prosecutor is right in her submissions, the Sponsoring Authority or the Police Officials ought to have put the petitioner Mr.S.Indramoorthy on notice stating that the interpretation given by them to the representation of the detenu is to the effect that he does not want a personal hearing and in all probabilities, the petitioner would have appeared before the Advisory Board. Considering all these facts, we are inclined to grant interim bail to the detenu, however, subject to a condition.

6. Accordingly, we enlarge the detenu Mr.Periyasamy, S/o.Palaniappan, who is currently confined in the Central Prison, Trichy, on interim bail on condition that he shall stay at Cuddalore and report before the Judicial Magistrate No.1, Cuddalore, twice a day at 10.30 am and 5.30 pm."

3. The prayer in the remaining Criminal Miscellaneous Petitions is to grant interim bail to the detenus, pending disposal of the Habeas Corpus Petitions.

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4. Before delving into the said prayer of the State, it is relevant to note down the following few dates with respect to the detenu in H.C.P.No.747 of 2020, which are important to appreciate the facts properly :

(i) the impugned detention in Crl.M.P.No.02/2020 was passed by the second petitioner on 26.02.2020 branding the detenue as "Sand Offender", as contemplated under Section 2(gg) of 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 14 of 1982] (hereinafter referred to as "the Act 14 of 1982").

(ii) the State Government approved the order of detention vide G.O.(Rt)No.1197, Home, Prohibition and Excise (XV) Department, dated 08.03.2020, in terms of Section 3(3) of the Act 14 of 1982 ;

(iii) the Advisory Board on 02.04.2020 opined that there was sufficient cause for the detention of the detenu in terms of Section 11 of the Act 14 of 1982 ;

(iv) thus, the State Government confirmed the detention order vide G.O.(Rt)No.2299, Home, Prohibition and Excise (XV) Department, dated 25.05.2020 ;

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(v) the brother-in-law of the detenu questioned the order of detention in H.C.P.No.747 of 2020, wherein, he filed Crl.M.P.No.3983 of 2020 seeking interim bail ; and

(vi) this Court passed the order dated 15.06.2020 granting interim bail to the detenu on conditions.

5. Heard the learned Additional Public Prosecutor and the learned Senior Counsel and the learned counsel for the petitioners, so also the learned counsel for the respondent in Crl.M.P.No.5340 of 2020.

6. The sum and substance of the submissions of the learned Additional Public Prosecutor is that the detenu cannot be released on interim bail on the ground that he was not produced before the Advisory Board, as there is no provision in the Act 14 of 1982, that mandates the production of the detenue before the Advisory Board.

7. The learned counsel for the respondent/writ petitioner sought to sustain the order dated 15.06.2020 on the premise that this Court after considering the merits in the plea of the writ petitioner granted the relief of interim bail to the detenu and there is no ground made out by the State to recall the said order.

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8. The learned Senior Counsel for the petitioners in Crl.M.P.Nos.4337 and 4366 of 2020 submitted that this Court has got power to grant interim bail to the detenus in deserving cases and in view of the grounds raised by the petitioners in questioning the legality of the detention orders, which could not be tested in the near future,

given the fact that the said petitions would be taken up by this Court for hearing only chronologically, based on the date of passing the detention orders, the petitioners may be granted the relief of interim bail.

9. The question that arises for consideration in this petition is, *whether the High Court can pass an interim order granting bail in a Habeas Corpus Petition ?*

10. At the outset, it is to be stated that the preventive detention is enacted to upkeep the public peace, tranquillity and orderliness in the society and the object of the same is not to punish a man for his wrongdoing without prosecution, but to intercept him from doing so. It is relevant to note that the Hon'ble Supreme Court in **State of Punjab V. Sukhpal Singh, 1990 SCC (Cri) 1,** held as follows :

> *"9. .... Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from so doing. The justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, any preventive measures even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. There is no reason why executive cannot take recourse to its powers of preventive detention in those cases where the executive is genuinely satisfied that no prosecution can possibly succeed*

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against the detenu because he has influence over witnesses and against him no one is prepared to depose. However, pusillanimity on the part of the executive has to be deprecated and pusillanimous orders avoided."

11. At this juncture, it is relevant to note that this Court in **A.K.Gopalan V. the District Magistrate and Others, AIR 1949 Mad 596,** made the following observations, while dealing with the Madras Maintenance of Public Order Act, 1947 :

"2. The law on the subject is very well-settled; but in view of the general importance of the right which the section is intended to protect, it is as well that I state it briefly. Habeas Corpus is a high prerogative right and it is a great constitutional remedy for all manner of illegal confinement. In England, it has been described as the Magna Carta of British liberty. The liberty of the subject has always been considered a question of gravest importance in England and no person can be kept in illegal custody for a single minute. In India, especially after the attainment of Independence, one cannot overstate its importance. Now that we have attained freedom, it is the sacred duty of this Court to see that no citizen of this province, whether he is rich or poor, whether he belongs to this or that political persuasion, is illegally detained for one minute. Of course, this is subject to the restrictions imposed on the personal liberty of the subject by the Legislature in its supreme wisdom having regard to emergent situations. But the executive should not be allowed to overstep the boundaries fixed by the Legislature and must prove that the action is strictly within the spirit and the letter of the law. No provision of the statute restricting the liberty of the citizen can be overlooked and no breach of any provision thereof can be condoned on the ground of administrative convenience or pressure of work. Madras Act I of 1947 is one of such Acts which admittedly restricts the individual liberty of

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the citizen in the interests of public welfare. ....
The other sub-sections to S. 3 empower the constitution of Advisory Councils for scrutinising and reporting on the propriety of the detention in individual cases. It will therefore be seen that the Act itself provides safeguards against abuse of such ultimated power and also gives an opportunity to the detenu to make adequate and proper representations in time to prevent grave and unintended injustice to a particular individual."

12. Keeping the said observation, it is relevant to rely upon section 11 of the Act 14 of 1982, sub-section (1) of the said provision dealing with the procedure of the Advisory Board, reads as follows :

*"**11. Procedure of Advisory Boards -** (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the state Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned."*

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13. Relying on Section 11, it is contended that in the absence of any specific request made by the petitioner for a personal hearing and also considering the pandemic COVID-19 situation, the petitioner was not given a hearing personally. Besides, it was pointed out that in the grounds of detention served on the detenu along with the detention order, in both the English and vernacular version, it has been

specifically mentioned in paragraphs 6 and 7 as follows :

> *"6. ...... He is informed that he is entitled to be heard in person by the Advisory Board. He is requested to intimate it to **"The Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Secretariate, Chennai-600 009,** specifically in writing as expeditiously as possible, whether he desires to be heard in person by the Advisory Board or not.*
>
> *7. He is also informed that he is permitted to have the assistance of a friend/relative, if he so desires, at the time of personal hearing by the Advisory Board, provided that his friend/relative is not an Advocate at that time and that he has to make his own arrangements to get the said friend/relative to be present at the time of personal hearing by the Advisory Board."*

14. It is submitted that despite such advice being given to the detenu, no such request was made. In this regard, learned Additional Public Prosecutor relied on the decision of the Hon'ble Supreme Court in **SK.Hasan Ali V. State of West Bengal, (1973) SCC (Crl) 73**, wherein, it has been held as follows :

> *"5. The first contention which has been raised by Mr Prashar is that the petitioner was not produced before the Advisory Board and, as such, was deprived of an opportunity of making oral submissions to the Board. In this respect we find that in the ground of detention which was served upon the petitioner along with the order of detention, he was informed that he could make a representation to the State Government against the detention order and that his case would be placed before the Advisory Board within thirty days from the date of detention. The petitioner was also told that in case he desired to be heard in person by the Advisory Board, he should intimate such desire in his representation to the State Government. The petitioner*

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in pursuance of that submitted a fairly long representation. It was, however, nowhere stated by the petitioner that he desired to be heard in person by the Advisory Board. It would, thus, follow that in spite of being told that he could have personal hearing before the Advisory Board the petitioner failed to intimate that he desired such a hearing. No grievance can consequently be made by the petitioner on the score that he was not afforded a personal hearing by the Advisory Board."

Therefore, it was argued that the detenu cannot be allowed to go on bail on the said grounds.

15. The Hon'ble Supreme Court in **Sukhpal Singh (cited supra),** while dealing with the opportunity to appear before the Advisory Board held as follows :

"24. The Advisory Board, as was held in A.K. Roy v. Union of India (1982) 1 SCC 271, is to consider the question whether there is sufficient cause for the detention of the person concerned and not where the detenu is guilty of any charge. The detenu may therefore present his own evidence in rebuttal of the allegations made against him and may offer other oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. If the detenu desires to examine any witnesses, he shall keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other Tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. If report is submitted by the Advisory Board without hearing the detenu who desired to be heard it will be violative of the safeguards provided under Article 22 of the Constitution and Sections 10 and 11 of the Act. Failure to produce the detenu, unless it is for wilful refusal of the

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detenu himself to appear, will be equally violative of those provisions. In State of Rajasthan v. Shamsher Singh, 1985 Supp SCC 416 the importance of the proceedings before the Advisory Board was highlighted. In fact it is the only opportunity for the detenu of being heard along with his representation for deciding whether there was sufficient cause for his detention.

* * * *

29. Thus as a result of these amendments applicable to the State of Punjab and the Union territory of Chandigarh we find on one hand addition to the grounds of detention and on the other, extension of the period during which a person could be detained without obtaining the opinion of the Advisory Board. There is, however, no amendment as to the safeguards provided under Article 22 and Sections 9, 10 and 11 of the Act. Indeed, there could be no such amendment. This reminds us of what was said, of course in a slightly different context. "Amid the clash of arms laws are not silent. They may be changed, but they speak the same language in war and peace." Would laws speak in a different language in internal disturbance? Lex uno ore omnes alloquitur. Law addresses all with one mouth or voice. Quotiens dubia interpretatio libertatis est secundum libertatem respondendum erit - Whenever there is a doubt between liberty and bondage, the decision must be in favour of liberty. So says the Digest."

If the facts of the present case is tested with the touch stone of the principle enunciated supra, it is clear that neither the detenu nor the petitioner made any attempt to avail the opportunity of personal hearing. A perusal of the records would go to show that the petitioner in his representation dated 12.03.2020 sought for the relief of setting the detenu at liberty, but failed to seek personal hearing.

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16. It is also not the case of the detenu or the petitioner that the case of the detenu was not placed before the Advisory Board and thereby the Advisory Board had no occasion to render its opinion on the detention order passed against him. On the other hand, though the detenu and the Sponsoring Authority did not appear before the Advisory Board given the COVID-19 pandemic situation, the materials pertaining to the detention of the detenu was placed before the Advisory Board and the Board unanimously opined that there was sufficient cause for the detention. Thus, the detenu cannot take umbrage on the said premise that he was not given opportunity of hearing before the Advisory Board.

17. It has been next argued by the learned Additional Public Prosecutor that the petitioner did not ask for temporary release of the detenu, but for interim bail. The effect of granting bail normally is to release the accused from internment, though the Court would still retain constructive control over him, through the sureties. Here the detenu was under preventive detention and not punitive detention. As the preventive detention is made with or without prosecution and is made to prevent a man from doing something which has necessarily to be prevented, no interim bail could be granted to the detenu. It is submitted by the learned Additional Public Prosecutor that jurisdiction of the High Court to grant relief to the detenu in such proceedings is

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narrow and limited. If for any reason, the detenu has to be released temporarily, then it is open to him to approach the State Government and get a release order, subject to conditions as prescribed under Section 15 of the Act 14 of 1982, which is extracted hereunder :

> *"**15. Temporary release of persons detained -** (1) The State Government, may, at any time, that any person detained in pursuance of a detention order may be released for any specified period, either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time cancel his release.*
>
> *(2) In directing the release of any detenu under subsection (1), the State Government may require him to enter into a bond, with or without sureties, for the due observance of the condition specified in the direction.*
>
> *(3) Any person released under sub-section (1) shall surrender himself at the time and place and to the authority, specified in the order directing his release or cancelling his release, as the case may be.*
>
> *(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine, or with both.*
>
> *(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said subsection or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof."*

Thus, it is contended that even for any temporary release of the detenu, the Government is competent to grant the same and there is no provision in the Act to grant interim bail to the detenue.

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18. It is further contended that if any *mala fides* are alleged, the Court cannot decide the same in a miscellaneous petition seeking interim relief and the same can be decided at the time of final hearing. The learned Additional Public Prosecutor relied on the judgment of a Five-Judge Bench of the Hon'ble Supreme Court in **the State of Bihar V. Rambalak Singh and Others, AIR 1966 SC 1441,** wherein, it has been held that it would not be safe, sound or reasonable to make an interim order on the *prima facie* provisional conclusion that there may be some substance in the allegation of *mala fides*, as also the other infirmities on which the order of detention is challenged. The relevant portion of the judgment dealing with the jurisdiction of the Court in this regard is as follows :

> *"11. In dealing with writ petitions of this character, the Court has naturally to bear in mind the object which is intended to be served by the orders of detention. It is no doubt true that a detenu is detained without a trial; and so, the courts would inevitably be anxious to protect the individual liberty of the citizen on grounds which are justiciable and within the limits of their jurisdiction. But in upholding the claim for individual liberty within the limits permitted by law, it would be unwise to ignore the object which the orders of detention are intended to serve. An unwise decision granting bail to a party may lead to consequences which are prejudicial to the interests of the community at large; and that is a factor which must be duly weighed by the High Court before it decides to grant bail to a detenu in such proceedings. We are free to confess that we have not come across cases where bail has been granted in habeas*

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corpus proceedings directed against orders of detention under Rule 30 of the Rules, and we apprehend that the reluctance of the courts to pass orders of bail in such proceedings is obviously based on the fact that they are fully conscious of the difficulties — legal and constitutional, and of the other risks involved in making such orders. Attempts are always made by the courts to deal with such applications expeditiously; and in actual practice, it would be very difficult to come across a case where without a full enquiry and trial of the ground on which the order of detention is challenged by the detenu, it would be reasonably possible or permissible to the Court to grant bail on prima facie conclusion reached by it at an earlier stage of the proceedings.

12. If an order of bail is made by the Court without a full trial of the issues involved merely on prima facie opinion formed by the High Court, the said order would be open to the challenge that it is the result of improper exercise of jurisdiction. It is essential to bear in mind the distinction between the existence of jurisdiction and its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the courts in dealing with applications of this character. Therefore, on the point raised by the learned Advocate-General in the present appeal, our conclusion is that in dealing with habeas corpus petitions under Article 226 of the Constitution where orders of detention passed under Rule 30 of the Rules are challenged, the High Court has jurisdiction to grant bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules."

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19. The above decision is followed in **State of U.P. V. Jairam, 1982 (1) SCC 176,** wherein, it has been held as follows :

"6. We are unable to appreciate how the learned Single Judge

could release the respondents on bail when, in the first instance, the writ petitions filed by them were listed for hearing before a Division Bench. Secondly, and that involves a question of principle, we are unable to see for what special reason the learned Judge thought it necessary to release the respondents on bail. The order passed by the learned Judge does not show that there was any pressing or particular reason of a unique kind for which it was imperative to enlarge the respondents on bail. If persons held in detention are released on bail in the manner done by the learned Judge, the very object and purpose of detention will be totally frustrated. Grave illness or pressing and personal business may justify an order of release in detention cases for a short period suited to the exigencies of the particular occasion. But a detenu cannot be released on bail as a matter of common practice, on considerations generally applicable to cases of punitive detention. The learned Single Judge virtually took upon himself the decision of the writ petitions on merits. He found, evidently on an on-the-spot argument, that the State Government had erred in not considering the representations of the respondents before forwarding them to the Advisory Board and released the respondents on bail as their further continuance in detention was "prima facie" vitiated.

10. We hope that the Division Bench which has already heard arguments in the writ petitions, will be able to deliver its judgment expeditiously, if it has not already done so."

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20. Reliance was also placed on the judgment of the Hon'ble Apex Court in **State of A.P. v. Balajangam Subbarajamma, 1989 (1) SCC 193,** wherein, it has been held as follows :

"10. The history of civilised man is the history of incessant conflict between liberty and authority. The concentration of power in one hand and liberty in the other cannot go side by side. Temptation to use the power to curtain or destroy the liberty will be always there.

It is found in the history of every country. The power to detain a person without trial is a serious inroad into the liberty of individuals. It is a drastic power capable of being misused or arbitrarily exercised. The Framers of our Constitution were not unaware of it. Some of them perhaps were the worst sufferers being the victims in the exercise of that arbitrary power. They had, therefore, specifically incorporated in the Constitution enough safeguards against the abuse of such power. The power to legislate in regard to preventive detention is located in Entry 9 of List I as well as in Entry 3 of List III in the Seventh Schedule of the Constitution. The safeguards in regard to preventive detention are incorporated under Article 22 of the Constitution. Article 22(4) provides:

> "No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless —
>
> (a)an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
>
> Article 22(5) provides:
>
> When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

11. These are the two important constitutional safeguards. The Advisory Board is a constitutional imperative. It has an important

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function to perform. It has to form an opinion whether there is sufficient cause for the detention of the person concerned. There is no particular procedure prescribed for the Advisory Board since there is no lis to be adjudicated. Section 11 of the Act provides only the broad guidelines for observance. The Advisory Board however, may adopt any procedure depending upon varying circumstances. But any procedure that it adopts must satisfy the procedural fairness. We need not deal with this aspect in detail since the Advisory Board consists of persons who are, or have been or are qualified to be appointed as judges of a High Court. They are men of wisdom and learning. Their report as envisaged under Section 11(2) of the Act should provide specifically in a separate part whereof as to “whether or not there is sufficient cause for the detention of the person concerned”. That opinion as to sufficient cause is required to be reached with equal opportunity to the State as well as the person concerned, no matter what the procedure. It is important for laws and authorities not only to be just but also appear to be just. Therefore, the action that gives the appearance of unequal treatment or unreasonableness — whether or not there is any substance in it — should be avoided by Advisory Board. We consider that it must be stated and stated clearly and unequivocally that it is the duty of the Advisory Board to see that the case of detenu is not adversely affected by the procedure it adopts. It must be ensured that the detenu is not handicapped by the unequal representation or refusal of access to a friend to represent his case."

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21. Thus, it is amply clear that this Court while dealing with habeas corpus petitions under Article 226 of the Constitution, wherein, the validity of the detention orders are sought to be questioned, has jurisdiction to grant interim bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to

such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the Act 14 of 1982.

22. In view of above principle, we are constrained to state that though this Court on 15.06.2020, as an interim relief, granted the interim bail on certain terms, now the learned Additional Public Prosecutor urged the necessity to keep the detenu under preventive detention in order to intercept him from doing something. Having heard the learned Additional Public Prosecutor and the learned counsel for the writ petitioner at length, we are of the considered view that the order dated 15.06.2020 needs to be recalled and the grounds raised by the petitioner in challenging the validity or otherwise of the detention order dated 26.02.2020 could be considered at the time of hearing the Habeas Corpus Petition finally.

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23. At this juncture, it is relevant to note that the Hon'ble Apex Court in **Municipal Corporation of Greater Mumbai and Others V. Pratibha Industries Limited and Others, (2019) 3 SCC 203,** dealt with the power of the High Court to recall its order in the following manner :

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"10. Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. .... It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.

** * **

*12. To similar effect is our judgment in **Shivdev Singh v. State of Punjab, AIR 1963 SC 1909**, wherein this Court has stated as under:*

> *"8. … It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."*

*13. Also, in **M.M. Thomas v. State of Kerala (2000) 1 SCC 666** , this Court has held as follows:*

> *"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] , a nine-Judge Bench of this*

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Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

24. In view of the above settled position, we are of the view that there is no embargo imposed on this Court in recalling the order dated 15.06.2020.

25. In the result, the miscellaneous petition in Crl.M.P.No.5340 of 2020 is allowed and the order dated 15.06.2020 passed in Crl.M.P.No.3983 of 2020 in H.C.P.No.747 of 2020 is recalled.

26. Consequently, the detenu is directed to surrender before the Superintendent of Prison, Central Prison, Tiruchirappalli, forthwith. If he fails to surrender immediately, it is open to the police authorities to secure him to be detained at Central Prison, Tiruchirappalli.

27. The Registry is directed to post H.C.P.No.747 of 2020 in the usual course for final hearing.

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28. As far as the remaining miscellaneous petitions are concerned, as held by this Court hereinabove, we are of the view that though this Court has got jurisdiction to grant interim bail in deserving cases, the exercise of such jurisdiction and power has intrinsic

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restrictions, as has been laid down in a catena of decisions of the Hon'ble Supreme Court. Accordingly, we have no hesitation to hold that the prayer for interim bail cannot be normally entertained by this Court in Habeas Corpus Petition, unless and until, it has been made out that intervention of this Court is indispensable at that stage. It is for the Government to venture into granting only leave to the detenus, if it is sought for by the detenus or their friends or relatives, and the failure of the Government or improper application of the provisions in exercise of such power alone will call for the interference from this Court.

29. Accordingly, Crl.M.P.Nos.4338, 4340, 4341, 4344, 4366 and 4337 of 2020 are dismissed. The Registry will list the Habeas Corpus Petitions in the usual course.

HIGH COURT OF JUDICATURE MADRAS
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(T.S.S., J.) (P.S.N., J.)
29.09.2020

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To

1. The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu
Fort St. George,

Chennai-600 009.

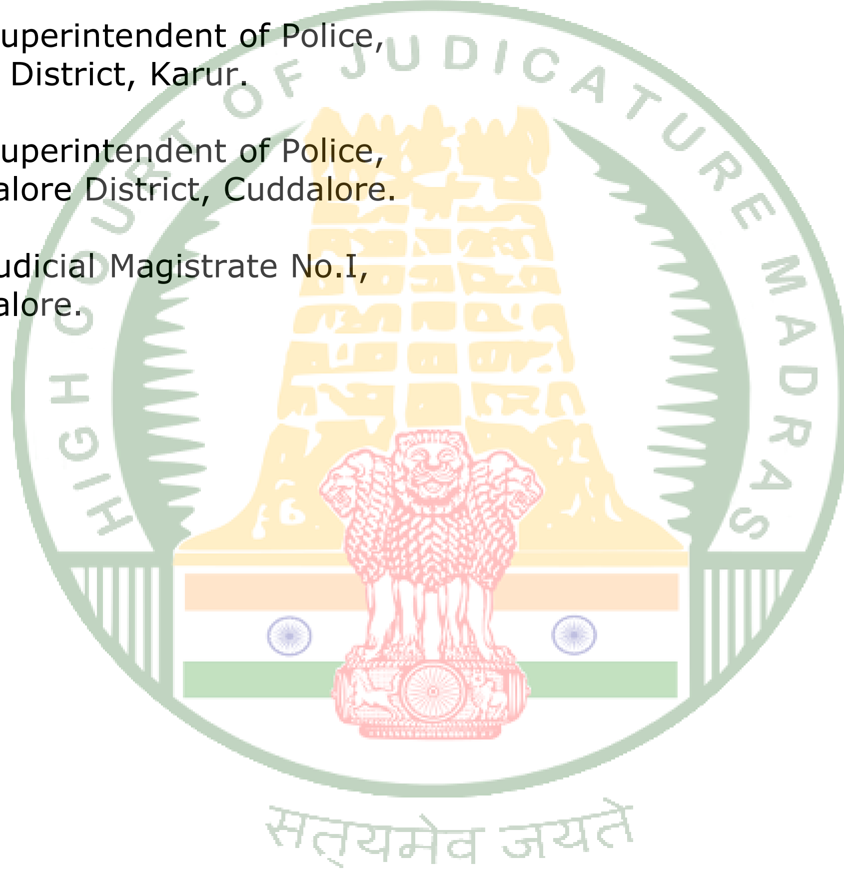
2. The District Collector and
   District Magistrate,
   Karur District, Karur.

3. The Superintendent of Prison,
   Central Prison, Trichirappalli.

4. The Superintendent of Police,
   Karur District, Karur.

5. The Superintendent of Police,
   Cuddalore District, Cuddalore.

6. The Judicial Magistrate No.I,
   Cuddalore.



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T.S.SIVAGNANAM, J.
AND
PUSHPA SATHYANARAYANA, J.

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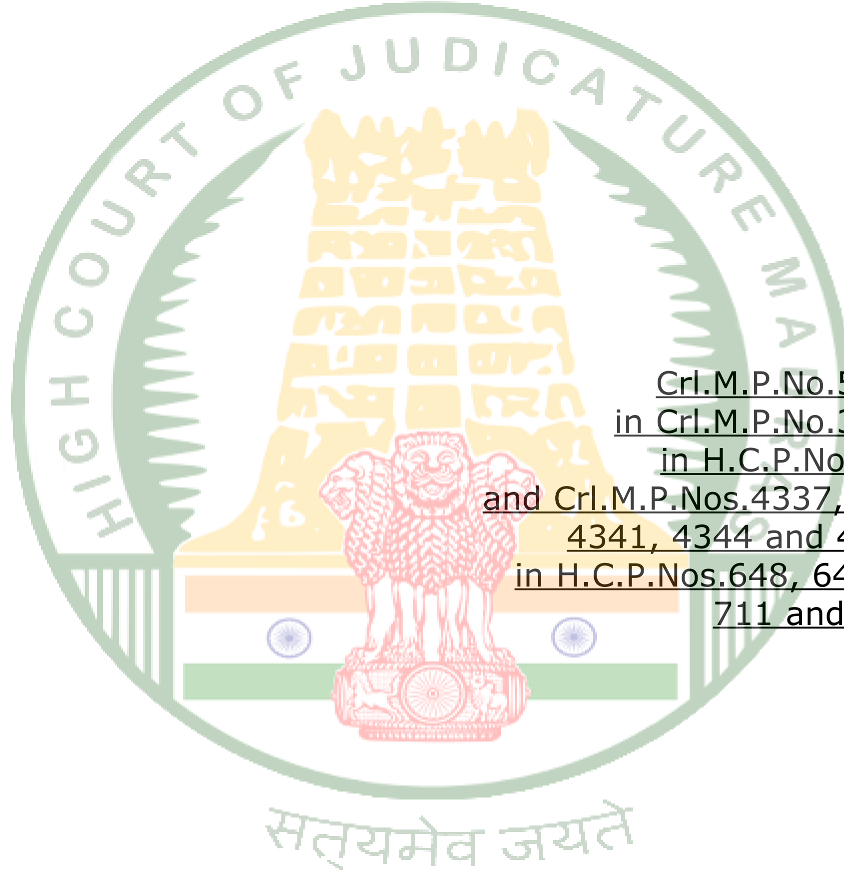

Crl.M.P.No.5340 of 2020
in Crl.M.P.No.3983 of 2020
in H.C.P.No.747 of 2020
and Crl.M.P.Nos.4337, 4338, 4340,
4341, 4344 and 4366 of 2020
in H.C.P.Nos.648, 649, 650, 656,
711 and 712 of 2020

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29.09.2020