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H.C.P.NO.23 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

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

H.C.P.NO.23 OF 2023

Panjalai

.. Petitioner

Vs.

- 1.State of Tamil Nadu
Rep. By the Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.District Collector and District Magistrate
of Chengalpattu District
Office of the District Collector and
District Magistrate
Chengalpattu, Chengalpattu District.
- 3.The Superintendent of Police
Chengalpattu,
Chengalpattu District.



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4.The Superintendent of Prison
Central Prison
Puzhal, Chennai – 600 066.

5.The Inspector of Police
Thirukazhukundram Police Station
Chengalpattu District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order in CPT No.68/2022 dated 26.11.2022 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Sankar S/o. Kuppusamy aged about 35 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Sankar S/o.Kuppusamy aged about 35 years the detenu herein at liberty.

For Petitioner : Mr.P.Yukesh Kumar
for Mr.G.Gopi Krishnan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

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

The case on hand is a classic case for reminding ourselves about some of the well settled principles in Habeas Corpus jurisprudence and they are :

(a) Preventive detention is not a punishment;

(b) Habeas Corpus is a high prerogative;

(c) The question which a Habeas Corpus Court will address itself to is whether normal law and order mechanism is good enough to contain the situation; and if the answer is in the affirmative preventive detention has to be interfered with;

(d) Whether public order is likely to be affected or has been affected is an adjunct question qua aforementioned question (previous point);



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2.Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 26.11.2022 bearing reference CPT No.68/2022 [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by second respondent acting on a proposal from fifth respondent.

3.Impugned preventive 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 brevity, convenience and clarity] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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4. There are no adverse cases. This ground case which is the sole substratum of the impugned preventive detention order is Crime No.594 of 2022 on the file of Thirukazhukundram Police Station for an alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve more qua factual matrix or be detained further by facts.

5. P.Yukesh Kumar, learned counsel representing Mr.D.Gopi Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. We revert to the opening paragraph of this order.

7. In the case on hand, the impugned preventive detention order is predicated on one solitary case and that one solitary case is an alleged offence under Section 302 IPC vide Crime No.594 of 2022 on the file of the

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fifth respondent. To be noted, the fifth respondent is the sponsoring authority qua impugned preventive detention order as already alluded to supra. We deem it appropriate to extract and reproduce two portions of the impugned preventive detention order and the same read as follows:

The complainant is residing in the above address. He is working in a NDR private company. He has two elder and one younger sister. His younger sister got married with one Sankar, S/o. Kuppusamy of Vilambur Village in the presence of parents before four years ago. And three months into the marriage, the above Sankar harassed the sister of the complainant. In this regard, they have made a compromise in the presence of the village elders. But her husband Sankar was constantly causing troubles to the Complainant's younger sister Eswari. This has led to the separation of the above two and the complainant's sister was living alone in a house belonging to one Mohan with her son Vishu Ruban for the past two years, by earning herself. However, whenever the above Sankar came to once or twice in a month to see his son, there happened quarrel



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between them. Her sister used to go to work along with her another sister Saraswati who is working in a garden owned by one Vishnu Das Reddiyar. On 23.10.2022, on the occasion of Diwali festival, she went to her house after worshipping god. As she did not respond to phone calls which made by Vishnu Das Reddiyar and even after hours, reddiyar became suspicious and informed grandmother Saroja, who works in the garden to go and see her. Accordingly, she went there and informed that there was no one outside the house while the doors were locked outside and the television and fan was running. Later, as the above Vishnu Das Reddiyar asked one Vimal to go and check, the latter went and check to find the house locked outside. He informed the said Vishnu Das Reddiyar over the phone that the Complainant's younger sister was lying wrapped with a bedsheet on the bedroom floor. Later, after Reddiyar asked the complainant to go and see her sister in person, immediately, the complainant rushed to her sister's home found that and noted her sister Eswari was lying on the bed room being wrapping with bedsheet and strangulated with her saree. At around 3.30 PM, as it



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became known that the complainant's sister was dead, the complainant enquired about the incident, with public of that area who revealed that Shankar, husband of Complainant's younger sister, came to the house around at 10.00 am and had a wordy quarrel with his sister and then took his son at 12.30 pm and left home. Then, it became clear that, Eswari, the younger sister of the complainant was beaten and strangled to death using a cloth. Hence, the complainant went to the station and filed a written complaint about the above incident and demanded appropriate action against her sister's husband.

Based on the complaint given on 23.10.2022 evening at 16.30 hrs, the Sub Inspector of Police registered a case in the file of Thirukazhukundram Police Station Cr.No.594/2022 u/s.302 of IPC and sent the original copy to the District Munsif cum Judicial Magistrate Thirukazhukundram and other copies to higher authorities concerned.'

...

...Further the recourse to normal criminal law will not have the desired effect of effectively preventing him



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from indulging in such activities which are prejudicial to the maintenance of public peace, public order in future...”

8.A careful perusal of the aforementioned two portions of impugned preventive detention order speak for themselves and make it so clear (without any further discussion) that the articulation in the impugned preventive detention order that recourse to normal criminal law will not have the desired effect and that there is prejudice to maintenance of public peace and public order is clearly unacceptable and this runs contrary to well settled legal principles qua Habeas jurisprudence.

9.In this regard, this Bench deems it appropriate to remind itself of the law laid down by Hon'ble Supreme Court in the celebrated ***Ram Manohar Lohia*** case law [***Ram Manohar Lohia vs. State of Bihar and another*** reported in ***AIR 1966 SC 740***]. Relevant paragraphs are paragraphs 51 and 52 which read as follows:



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'51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorder or only some ? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder, They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still



one of law and order but it raises the apprehension of public disorder. Other example can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52.It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may



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affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.'

10.The aforementioned two paragraphs in the celebrated **Ram Manohar Lohia** case law makes it clear that Hon'ble Supreme Court has laid down three concentric circles doctrine and the three concentric circles doctrine turns on law and order, public order and State security. By taking an illustrative approach, Hon'ble Supreme Court elucidated the clear and certain distinction between Law and Order & Public Order and as to when a particular matter would move from Law and Order larger circle to the public order smaller concentric circle.

11.Be that as it may, before proceeding further, we deem it appropriate to say that the aforementioned celebrated **Ram Manohar Lohia** judgment rendered half a century ago has stood the test of time as the same

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has been followed as recently on 04.04.2022 in an order made in

Crl.A.No.561 of 2022 [Mallada K Sri Ram vs. The State of Telengana and others] authored by Hon'ble Justice Dr.Dhananjaya Y Chandrachud.

Relevant paragraph is paragraph 12 and the same reads as follows:

12.The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

'51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum



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52. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the



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12.Reverting to **Ram Manohar Lohia** principle and the three concentric circles doctrine we find that it is a locus classicus in Habeas jurisprudence of matrimonial discord and an aggression on the part of one spouse as against the other has resulted in the unfortunate death of the victim. We are informed that the victim's brother is the defacto complainant.

13.We are informed by the learned Public Prosecutor that in the Trial Court charge sheet has been filed being PRC No.29 of 2022 on the file



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of District Munsif cum Judicial Magistrate, Thirukazhukundram within the prescribed time and the detenu still remains in incarceration. This buttresses the theory that the normal law and order mechanism is good enough to contain the situation. We also remind ourselves that as regards habeas jurisprudence, the primary question which a habeas corpus court would address itself to is, whether the regular / normal Law and Order mechanism is good enough to contain the situation or does it warrant resort to preventive detention as the matter gravitates from the Law and Order circle to the smaller public order concentric circle.

14.To put it in simple terms, we have no difficulty in saying that it is only a case of Law and Order problem and it has not even gravitated towards the next smaller circle of Public Order in the three concentric circles doctrine and therefore, the sequitur is, the impugned preventive detention order deserves to be dislodged.

15.Liberty is the very quintessence of a civilised society and it can be described as a grundnorm of a refined civilization. In this societal



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view of the matter, clamping a preventive detention order and depriving a person of his liberty on the sole basis of a solitary case of the nature of case on hand (i.e., matter where marital discord and family dispute had unfortunately got escalated to the level of loss of a life) are cases where Court may have to award compensation to the detenu. We make it clear that in the days to come, this court would start seriously examining the need to direct the State to pay compensation to the detenu if preventive detention orders are clamped in matters of this nature. The case on hand is a fit case for awarding such compensation but this Court refrains itself from doing that in this case as this Court (taking into account the trajectory of such matters on earlier occasions) is of the view that the State should be put on caveat before that is done. This is to give an opportunity to the State to make a socio-legal introspection and adopt course correction to ensure that preventive detention orders are not clamped in cases of this nature where there is no smidgen nay not even a scintilla of public law element. The reason is, a prisoner and his fundamental rights do not part ways at the prison gates. The law providing for depriving a person of his personal liberty has to stand the test of one or more of fundamental rights conferred

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under Article 19 as observed by a Seven Judges Bench of Hon'ble Supreme Court in *S.N.Sarkar Vs. State of West Bengal* reported in *AIR 1973 SC 1425*. In *A.K.Gopalan*, i.e., *A.K.Gopalan Vs. State of Madras* reported in *AIR 1950 SC 27*, the majority view was that Article 22 was a self contained code and therefore, law of preventive detention does not have to satisfy the requirement of Articles 19, 14 and 21. To be noted, in *A.K.Gopalan*, the lone dissent penned by Hon'ble Mr.Justice Fazl Ali articulated the view that preventive detention was a direct breach of rights adumbrated and enshrined inter-alia in Article 19(1)(d) [paragraph 111] and therefore, a law providing for preventive detention has to be subjected to judicial review as is obtainable under Clause (5) of that Article. The majority view in *A.K.Gopalan* was disapproved by Eleven Judges Bench in *R.C.Cooper Vs. Union of India* reported in *AIR 1970 SC 564*. Thereafter, in aforementioned *S.N.Sarkar*, Seven Judges Bench of Hon'ble Supreme Court specifically observed in paragraphs 38 and 39 that *A.K.Gopalan*'s case was no longer good law. This means that the lone dissenting view of Hon'ble Mr.Justice Fazl Ali in *A.K.Gopalan* subsequently became the law. It is in this view of



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the matter that we say that in cases of this nature, in days to come, this Court will consider awarding compensation to the detenu for infraction of Articles 19(1)(a) and 19(1)(d).

16.Ergo, captioned HCP is allowed. Impugned detention order dated 26.11.2022 bearing reference CPT No.68 of 2022 made by the second respondent is set aside and the detenu Thiru. Sankar, aged 35, son of Thiru. Kuppusamy, 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.)

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Index : Yes

Speaking

Neutral Citation : Yes

TK

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

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To

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1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
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Chennai – 600 009.
2. District Collector and District Magistrate
of Chengalpattu District
Office of the District Collector and
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AND
R.SAKTHIVEL, J.

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