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H.C.P.No.651 of 2023

-IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.651 of 2023

R.Subramani

S/o.Raman

.. Petitioner /
Father of the detenu

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Tiruppur District
3. The Superintendent of Police
Tiruppur District
4. The Superintendent of Central Prison
Central Prison
Coimbatore District
5. The Inspector of Police
Kangayam Police Station

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Tiruppur District.

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction to produce the body of the detenu by name Vijay @ Sanjay, son of Subramani, aged 26 years, presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 27.03.2023 in Cr.M.P.No.11/Goonda/2023 passed by the 2nd respondent and quash the same.

For Petitioner	:	Mr.S.Bharanidharan
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed for admission on 21.04.2023 and this Court made the following order:

'H.C.P.No.651 of 2023

M.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this



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Court on 06.04.2023 inter alia assailing a detention order dated 27.03.2023 bearing reference Cr.M.P.No.11/GOONDA/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Father of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b) and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently, altered into Sections 294(b) and 302 of IPC in Crime No.93 of 2023 on the file of Kangayam Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that there is a delay of 26 days in passing the impugned detention order.



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6. *Prima facie case made out for admission. Admit.*

Issue Rule nisi returnable by four weeks.

7. *Mr.E.Raj Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

2. The aforementioned Admission Board order dated 21.04.2023 captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.S.Bharanidharan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. A perusal of paragraph 5 of the aforementioned Admission Board order makes it clear that at the time of admission, learned counsel had posited his challenge to the impugned preventive detention order on the point that there is delay qua date of arrest in making the impugned



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preventive detention order, however today in the final hearing Board, learned counsel drew our attention to sub-paragraph (iv) of Paragraph 3 of the grounds of impugned preventive detention order, which reads as follows:

(iv) It was ascertained through the enquiry of the Inspector of Police that as Velal's husband Palani and eldest son Subramani both had died, she is residing along with her younger son Senthilkumar at Varathappampalayam Colony, Kangayam Taluk, marriage was solemnized between younger son Senthilkumar who is doing building work and Prema of Salaipudur, Kodumudi, about twelve years ago, they are having two sons in the age of 11 years and 7 years and all are residing jointly, Prema was doing the work of pump operator for filling petrol to the vehicles in a petrol bunk situated at Moolakadai and that Prema got acquaintance with Vijay alias Sanjay of Bhathiyar Nagar, Nathakadaiyur and they both were talking often. As Prema did not like her acquaintance with Vijay alias Sanjay in a stage, she was avoiding meeting with Vijay alias Sanjay and talking over cell phone. For that Vijay alias Sanjay threatened her by saying that he would set fire of her and her family if she did not acquaintance with him. In order to seek an end to the problem arose in between both of them Prema told with her husband Senthilkumar and mother in law Velal and relatives and asked to talk with Vijay alias Sanjay to which Vijay alias Sanjay refused for it. Hence, all remained to solve it by talking later. While so, as Vijay alias Sanjay



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gave disturbance to Prema continuously. Prema started an account at Facebook in the name of Sanjay and uploaded the photos of them available. On knowing that when Vijay alias Sanjay asked why she had did so, she told him that she did so, in order not to give her further trouble. While so, Prema had kept away from talking with Vijay alias Sanjay in whole and after knowing that Prema was available alone on the occurrence day, Vijay alias Sanjay went to her house and engaged in a quarrel with Prema and as Prema was stubborn from not having acquaintance with Vijay alias Sanjay, Vijay alias Sanjay took out the kerosene can available at Prema's house, poured kerosene over Prema and set fire by saying as she would not alive who not available to him and that Prema left the house by screaming with fire flames all over her body.'

5. Adverting to the aforementioned sub-paragraph (iv) of paragraph 3 of grounds of impugned preventive detention order, learned counsel submitted that aforesaid sub-paragraph (iv) captures and sets out the ground case.

6. A careful perusal of the ground case will make it clear that it is a case of law and order and there is nothing to demonstrate that there is any act qua detenu which is in any manner prejudicial to maintenance of public order.



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7. In response to the aforementioned argument, learned Prosecutor submitted that it is quite possible that the detenu would indulge in similar activities (similar to the ground case) in the days to come and therefore, the impugned preventive detention order deserves to be sustained.

8. We carefully considered the submissions made on both sides. The clear distinction between 'law and order' and 'public order' has been elucidatively explained by Hon'ble Supreme Court in the celebrated **Ram Manohar Lohia** case law i.e., **Ram Manohar Lohia vs. State of Bihar and another** reported in **AIR 1966 SC 740**. The most relevant paragraphs in **Ram Manohar Lohia** are paragraphs 51 and 52, which reads as follows:

'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



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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



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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 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.'

9. The aforementioned paragraphs in **Ram Manohar Lohia** speak for themselves elaborately and eloquently. Hon'ble Supreme Court has put in place the three concentric circles doctrine and has also illustratively explained the same as to when a given case moves from the larger law and order circle to the next smaller public order concentric circle. If the illustration and the elucidation of Hon'ble Supreme Court is applied to the case on hand, in the light of the narrative in sub-paragraph (iv) of paragraph 3 of impugned preventive detention order {extracted and reproduced supra in this order}, it is clear that the matter has not even gravitated towards the next smaller concentric circle of public order.

10. This Court also reminds itself that a habeas Court would ask itself the question as to whether the normal law and order machinery and the



normal law and order mechanism is good enough to deal with the situation or as to whether it is imperative to resort to preventive detention to ensure and contain activities prejudicial to maintenance of public order.

11. In the light of the narrative, discussion and dispositive reasoning set out supra, it emerges clearly that there is nothing to demonstrate that the detenu has acted in a manner that is prejudicial to the maintenance of public order. Absent this phenomenon, there can be no preventive detention much less a preventive detention within the meaning of Section 3(1) of Act 14 of 1982 as it reads as follows:

*'3. Power to make orders detaining certain persons._(1)
The State Government may, if satisfied with respect to any bootlegger or cyber law offender or drug offender or video pirates, or forest-offender or goonda or immoral traffic offender, sand offender or sexual offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.'*

*(underlining made by this Court to
supply emphasis and to highlight)*

12. We also deem it appropriate to say that **Ram Manohar Lohia** which was rendered more than half a century ago is a celebrated judgment



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which has stood the test of time as **Ram Manohar Lohia** has been followed by Hon'ble Supreme Court as recently in April of 2022 in **Mallada K Sri Ram** case [**Mallada K Sri Ram Vs. The State of Telangana & Ors.** reported in **2022 SCC OnLine SC 424**] vide order dated 04.04.2022 made in Criminal Appeal No.561 of 2022 arising out of SLP (Crl) No.1788 of 2022] and Hon'ble Dr. Dhananjaya Y Chandrachud.J. speaking for the Hon'ble Bench has referred to Ram Manohar Lohia in the following manner:

'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 Bihar⁵. 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 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 disorders or only some of them? 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.***



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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 examples 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(1)(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 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.”

(emphasis supplied)



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13. In the case on hand, the impugned preventive detention order deserves to be dislodged as there is nothing to demonstrate that there is any prejudice to maintenance of public order.

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.03.2023 bearing reference Cr.M.P.No.11/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Vijay alias Sanjay, male, aged 26 years, son of Thiru.Subramani, 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.)

16.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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Chennai-600 009.
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Office of the District Magistrate and District Collector
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and
R.SAKTHIVEL, J.,

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