



H.C.P.No.565 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.565 of 2023

Jeyamani

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.

2.The District Magistrate and District Collector,
Office of the District Magistrate and
District Collector, Thiruppur District,
Thiruppur.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Thiruppur District.

4.The Inspector of Police,
Avinashi Police Station,
Thiruppur District.

5.The Superintendent,
Central Prison, Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the
records pursuant to the order in Cr.M.P.No.78/Goonda/2022 dated
09.12.2022 passed by the second respondent and quash the same



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consequently produce the detenu Mahendran, aged about 30 years, S/o.Jeyamani, before this Court and set him at liberty, the detenu is now confined in Central Prison, Coimbatore.

For Petitioner : Mr.D.Arun
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 12.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 15.03.2023 inter alia assailing a detention order dated 09.12.2022 bearing reference Cr.M.P.No.78/GOONDA/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 454, 457 and 380 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.448 of 2022 on the file of Avinashi 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



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(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 the representation submitted by the detenu was not considered.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

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

2. The aforementioned order made in the 12.04.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are five adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.448 of 2022 on the file of Avinashi Police Station for the alleged offences under Sections 454, 457 and 380 of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.D.Arun, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the Admission Board (as would be evident from paragraph 5 of the Admission Board order dated 12.04.2023), learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the ground that the representation submitted by the detenu was not considered. Be that as it may, in the Final Hearing Board today, learned counsel posited his argument on the ground that the detaining authority has arrived at subjective satisfaction regarding 'compelling necessity' to detain the detenu by clamping a preventive detention order in the abstract with no supporting material as detaining authority has noticed the fact that no bail petition has been moved by the detenu but has arrived at 'compelling necessity' subjective satisfaction by broadly saying on the materials placed before me. Elaborating his argument in this direction, learned counsel drew our attention to a portion of paragraph 5 of the grounds of the impugned preventive detention order which reads as follows:

'...Further, I am aware that Mahendran was kept



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under judicial custody in Udumalaipettai Police Station Crime Numbers 316/2022, 443/2022 and 449/2022 cases and his remand period has been extended in those cases till 14.12.2022 and he has not moved any bail petitions in Udumalaipettai Police Station cases till the date. On the materials placed before me, I am satisfied that the said Mahendran is a Goonda and there is a compelling necessity to detain him in custody under the Tamil Nadu Act 14 of 1982.....'

6. Adverting to the aforementioned portion of the impugned preventive detention order, learned counsel submitted that the detaining authority has taken note of the fact that there are materials placed before him that as on the date of the impugned preventive detention order the detenu has not moved any bail petition. There is no other articulation regarding compelling necessity of the detenu being enlarged on bail. To be noted 'no bail petition being filed' will only buttress 'no compelling necessity'.

7. Learned Prosecutor submitted to the contrary and submitted that the detaining authority has mentioned that he is satisfied that there is a compelling need to detain the detenu by invoking the preventive detention statute. In any event perusal of case file, grounds booklet etc., bring to light that there is no



material supporting aforementioned 'compelling necessity'.

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8. We carefully considered the case file before us in the light of the submissions on either side and we find that 'compelling necessity' set out by the detaining authority in the impugned preventive detention order is clearly in the abstract i.e., not supported by any material much less material supplied to the detenu. In this view of the matter, we find that compelling necessity is an important ingredient and the same has to be supported by more material. We also remind ourselves of the locus classicus in habeas jurisprudence i.e., **Dr. Ram Manohar Lohia** case [**Dr. Ram Manohar Lohia Vs. State of Bihar and Ors.** reported in **AIR 1966 SC 740**] and more particularly, paragraphs 51 and 52 thereat, which read as follows:

51. Reliance is first placed upon a decision of the Federal Court in Lakhi Narayan Das v. Province of Bihar where the Court dealing with Item 1 of Provincial List, 7th Schedule in the Government of India Act, 1935 which read—

"Public order (but not including the use) of His Majesty's naval, military or air forces in aid of the civil power"
observed that "Public Order" with which that item began was "a most comprehensive term". Reference is also made to *Ramesh Thapar v. State of Madras* where this Court dealing with the same subject matter also



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observed:

"...“public order” is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established ... it must be taken that “public safety is used as a part of the wider concept of public order...”.

and inferring to Entry in List 3 (Concurrent List) of the 7th Schedule of the Constitution which includes the “security of a State” and “maintenance of public order” as distinct topics of legislation, observed—

“.... The Constitution thus requires a line to be drawn in the field of public order or tranquility marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are circulated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind”.

*Fazl Ali, J. took a different view which he had expressed more fully in *Bnjbhushan v. State of Delhi* but he also observed that “public safety” had, as a result of a long course of legislative practice acquired a well recognised meaning and was taken to denote safety, or security of the State and that the expression “public order” was wide enough to cover small disturbances of the peace which do not jeopardise the security of the State and paraphrased the words “public order” as “public tranquillity”.*

'52. *Both the aspects of the matter were again*



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before this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia when dealing with the wording of clause (2) of Article 19 as amended by the Constitution (First Amendment) Act, 1951, it fell to be decided what "public order" meant. Subbarao, J. speaking for the Court referred to all earlier rulings and quoting from them came to the conclusion that "public order" was equated with public peace and safety and said:

"...Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of Article 19...."

Summing up the position as he gathered from the earlier cases, the learned Judge observed:

"... "public order" is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State;"

9. The three concentric circles doctrine laid down by Hon'ble Supreme Court in the celebrated *Ram Manohar Lohia* case law has stood test of time [to be noted, Ram Manohar Lohia principle has been followed even as illustration in *Mallada's case* (***Mallada K.Sri Ram Vs. The State of Telangana & Ors.***) reported in **2022**



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LiveLaw (SC) 358 authored by by Hon'ble Dr. Justice Dhananjaya

Y.Chandrachud] and in the case on hand, there is nothing really to demonstrate that the matter has moved from the larger 'law and order' concentric circle to the smaller 'public order' concentric circle. We are of the considered view that there is nothing even to demonstrate that the matter has moved from larger concentric circle of law and order to smaller concentric circle of public order. We also make it clear that we had adopted the same illustrative approach that has been laid down qua test which the Hon'ble Supreme Court has set out in *Ram Manohar* case.

10. As we are convinced that the normal law and order is good enough to contain the situation and as we also found that subjective satisfaction qua compelling necessity is impaired, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.12.2022 bearing reference Cr.M.P.No.78/Goonda/2022 made by the second respondent is set aside and the detenu Thiru.Mahendran, aged 30 years, son of



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Thiru.Jeyamani, 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.)
04.07.2023

Index : Yes/No

Neutral Citation : Yes/No

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and
District Collector, Thiruppur District,
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- 3.The Superintendent of Police,
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- 6.The Public Prosecutor,
High Court, Madras.



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

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