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H.C.P.No.979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.979 of 2023

Jothi
W/o.Rajappa

.. Petitioner

Vs

1. The State of Tamil Nadu
By its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The District Collector and
The District Magistrate
Krishnagiri District
Krishnagiri.
3. The Superintendent of Police
Krishnagiri District
Krishnagiri.
4. The Inspector of Police
Mathigiri Police Station
Krishnagiri District.
5. The Superintendent
Central Prison
Salem.

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the second respondent herein pertaining to the detention order made in S.C.No.05/2023 dated 17.03.2023 and quash the same and direct the respondents to produce the body of the detenu Mr.Sandeep, son of Mr.Rajappa, aged about 22 years, now detained in Central Prison, Salem, before this Hon'ble Court and the set the detenu at liberty forthwith.

For Petitioner : Mr.M.P.Saravanan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind .C

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court in Admission Board on 09.06.2023, the following proceedings / order was made:

'H.C.P.No.979 of 2023

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,



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

Captioned Habeas Corpus Petition has been filed in this Court on 02.06.2023 inter alia assailing a detention order dated 17.03.2023 bearing reference S.C.No.05/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.M.P.Saravanan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 302 and 307 of IPC in Crime No.55 of 2023 on the file of Mathigiri 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 25 days in passing the impugned



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preventive detention order as the detenu was arrested in the ground case on 21.02.2023 but the impugned preventive detention order has been passed on 17.03.2023.

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.'

3. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. Be that as it may, we shall continue to use the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 17.03.2023 bearing reference S.C.No.05/2023 made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.



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

5. As would be evident from paragraph No.5 of the Admission Board order, at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the ground that live and proximate link between the grounds of detention and purpose of detention had snapped though it was projected as 25 days delay as between date of arrest and date of making of impugned preventive detention order but in the final hearing Board today, learned counsel changed his line of attack and submitted that the impugned preventive detention order is vitiated as there is nothing to demonstrate that the detenu is acting in any manner prejudicial to the maintenance of public order.

6. Elaborating on the aforementioned submission, learned counsel for petitioner i.e., HCP petitioner submitted that the expression 'acting in any manner prejudicial to the maintenance of public order' has been prescribed /



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explained vide Section 2(1)(a) of Act 14 of 1982 and with regard to 'Goonda' within the meaning of Section 2(1)(f) of Act 14 of 1982, the relevant provision is Section 2(1)(a)(iii) read with Section 2(1)(f) of Act 14 of 1982 which reads as follows:

2. Definitions. - (1) In this Act, unless the context otherwise requires : -

(a) "acting in any manner prejudicial to the maintenance of public order" means :

(i)

(i-A)

(ii)

(ii-A)

(iii) in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iv)

(iv-A)

(iv)-B)

(v)

(vi)

(b)

(bb)

(c)



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(d)

(e)

(ee)

(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, commits, or attempts to commit or abets the commission of offence [punishable under Section 153 or Section 153-A under Chapter VIII or under [Chapter XVI other than Sections 354, 376, 376-A, 376-B, 376-C, 376-D and 377] or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act 45 of 1860) or punishable under Section 3 or Section 4 or Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992);]

7. In response to the aforementioned argument, learned Prosecutor submitted that there is one adverse case and one ground case namely, Crime No.139 of 2021 for alleged offences under Sections 120-B, 302 and 201 of IPC and Crime No.55 of 2023 for alleged offence under Section 302 of IPC both on the file of Mathigiri Police Station. To be noted, Station House Officer of Mathigiri Police Station is Sponsoring Authority and fourth respondent in the captioned HCP.



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8. Therefore, considering two successive offences wherein dates of occurrence are 25.06.2021 and 20.02.2023, the impugned preventive detention order is justified.

9. We carefully considered the rival submissions made on both sides.

10. The short point on which the matter turns is whether the detenu has acted in any manner prejudicial to maintenance of public order or as to whether it is only a case of law and order. We remind ourselves of fundamental principle that a Constitutional Court was called upon to test a preventive detention order in a habeas legal drill would first ask the question as to whether normal law and order mechanism will suffice to deal with offences or as to whether the matter has gravitated towards public order and it has become necessary to resort to preventive detention to contain the situation.

11. In our endeavour to search for answer to the aforesaid question which we have posed to ourselves, we remind ourselves of the celebrated



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Ram Manohar Lohia case law [**Ram Manohar Lohia vs. State of Bihar** and another reported in **AIR 1966 SC 740**] wherein the distinction between law and order and public order was nicely brought out by adopting an illustrative elucidation approach by Hon'ble Supreme Court. To be noted, **Ram Manohar Lohia** principle continues to be a good law as the same has been reiterated and followed by Hon'ble Supreme Court as recently as 04.04.2022 in **Mallada's case [Mallada K.Sri Ram Vs. The State of Telangana & Ors. reported in 2022 LiveLaw (SC) 358]** which is also a case pertaining to preventive detention arising from State of Telangana.

12. Most relevant paragraphs in **Ram Manohar Lohia** case law are Paragraph Nos.54 and 55 which read as follows:

'54. 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



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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.

55.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.'

13. A careful perusal of the aforementioned elucidation by Hon'ble Supreme Court by adopting an illustrative approach would make it clear that the matters are gravitating from the first larger concentric circle of law and order to the second concentric circle of public order for justifying clamping of preventive detention order. To be noted, three concentric circles Doctrine has been put in place in celebrated ***Ram Manohar Lohia*** case law.

14. We respectfully followed ***Ram Manohar Lohia*** case law reiterated by Hon'ble Supreme Court in *Mallada's case*. We apply the three concentric circles Doctrine as a litmus test in the case on hand. In the case on hand, aforementioned adverse case as well as ground case are clearly cases pertaining to prior enmity between the detenu and family of one



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Manjunath. Atleast this is the prosecution theory. We express no opinion on this aspect of the matter as we are only concerned with habeas legal drill.

It is a case of feud between two families. In this view of the matter, we find that the alleged offences in the adverse case as well as ground case are clearly matters where the motive is prior enmity between two families. This means that even according to prosecution theory, it perambulates within the meaning of first concentric circle of law and order and it does not gravitating towards second smaller circle of public order. Absent any threat to maintenance of public order or inaction on the part of the detenu which is construed as acting in a manner which is prejudicial to maintenance of public order more particularly, acting in any manner prejudicial to the maintenance of public order within the meaning of Section 2(1)(a) of Act 14 of 1982, the impugned preventive detention order will not have legs to stand as the substratum will stand eroded. In the case on hand, as both adverse case and ground case which constitute the entire substratum of impugned preventive detention order are cases of prior enmity / feud between two families, we have no hesitation to say that this is not a case which pertains to maintenance of public order or any action on the part of



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detenu which can be construed as an action which is prejudicial to maintenance of public order. In other words i.e., to put it differently, we are of the view that normal law and order mechanism is good enough to prosecute the detenu and we make it clear that we are expressing no opinion or view on the merits of the matter as the ground case and adverse case are pending at various stages. In the light of the narrative, discussion and dispositive reasoning set out supra, the impugned preventive detention order is vitiated as there is no element of public order much less there is nothing to demonstrate that the detenu is acted in a manner which is prejudicial to maintenance of public order. This means that the impugned preventive detention order will stand dislodged in this habeas legal drill.

15. Before writing the operative portion, we remind ourselves that preventive detention orders are not punishments and habeas corpus writs are high prerogative writs.

16. Ergo, the sequitur is captioned HCP is allowed. Impugned



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detention order dated 17.03.2023 bearing reference S.C.No.05/2023 made by the second respondent is set aside and the detenu Thiru.Sandeep, male, aged 22 years, son of Thiru.Rajappa, 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.)

27.09.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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



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To
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R.SAKTHIVEL, J.,

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