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H.C.P.No.1385 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1385 of 2022

Nithya Prasanth

W/o.S.Prasanth

..

Petitioner

Vs.

1. State of Tamil Nadu
Rep. by Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.

2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai-600 007.

3. State by Inspector of Police
Team XVI, Anti Land Grabbing Special-I
Central Crime Branch
Chennai.

4. The Superintendent
Central Prison,
Puzhal, Chennai-600 066.

..

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 upon the production of records relating to the detention order dated 03.06.2022 made in detention order in No.147/BCDFGISSSV/2022 passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body of the petitioner's father-in-law Mr.S.Sridhar, son of Late Subramaniyan, aged about 54 years, who has been detained in Central Jail, Puzhal before this Hon'ble Court and set at liberty.

For Petitioner : Ms.Vedavallikumar
For Respondents : Mr.R.Muniyapparaj
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] has been filed in this Court on 13.07.2022 assailing a 'detention order dated 03.06.2022 bearing reference No.147/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'second respondent i.e., jurisdictional Commissioner of Police' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent i.e., Inspector of Police, Central Crime Branch is the Sponsoring Authority.

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2. When the matter was taken up for hearing on 01.02.2023,

proceedings made by us reads as follows:

'Ms.Vedavallikumar, learned counsel for petitioner and Mr. R.Muniyapparaj, learned Additional State Public Prosecutor for respondents were before us.

2. In the impugned detention order there is a reference to C.S.No.889 of 2006 which is a suit on the original side of this Court. Learned counsel for petitioner submitted that copy of the plaint or any other proceedings has not been supplied to the detenu as part of the booklet.

3. This Bench wanted to know the purpose of referring the suit in the impugned detention order. Learned Additional Public Prosecutor requested for a short accommodation to get instructions and revert to this Court.

List on 07.02.2023.'

3. Pursuant to the aforementioned proceedings dated 01.02.2023, learned Additional Public Prosecutor placed before us a copy of the plaint in C.S.No.889 of 2006. We are also informed that there is a cross suit qua C.S.No.607 of 2007. We find from the copies of the pleadings in civil suit that the detenu is not a party to these suits.



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4. To be noted, the ground case is Crime No.717 of 2021 for alleged offences under Sections 147, 427 and 448 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] on the file of E-4, Abiramapuram Police Station on the complaint of one Mr.Mahaveerchand Dhoka.

5. Ms.Vedavallikumar, learned counsel on record for petitioner in her campaign against the impugned detention order pointed out that the entire transaction is a civil transaction, the impugned detention order is based on confession of the accused in adverse cases and in any event, preventive detention clamped on the co-accused have been set aside by this Court vide orders dated 20.12.2022 in HCP Nos.911 of 2022, 1246 of 2022, order dated 17.08.2022 in HCP No.419 of 2022 and order dated 02.09.2022 in HCP No.416 of 2022.

6. Learned Additional Public Prosecutor in response to the above argument submitted that it may not be a simple civil transaction as the allegation is that the accused barged into the property and forcibly



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dispossessed the occupants and took possession.

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7. We carefully examined the impugned detention order. We find from the impugned detention order that when tested on a demurrer, it may well be a law and order problem but not a public order problem. As regards law and order, public order and national security, we remind ourselves of the celebrated judgment of Hon'ble Supreme Court in **Ram Manohar Lohia** case law [**Ram Manohar Lohia vs. State of Bihar and another** reported in **AIR 1966 SC 740**]. Relevant paragraphs are paragraph Nos.51 and 52 and the same 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 observed:



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“...“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



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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 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;”.'

8. To be noted, in paragraph No.51, an illustrative approach has been



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taken by Hon'ble Supreme Court and paragraph No.52 propounds three concentric circles theory qua preventive detention jurisprudence. For an offence which may well be a law and order problem to move into next smaller concentric circle of a public order, it is necessary that an element of prejudice to maintenance of public order is imperative. In other words, every law and order problem does not get escalated to public order. In the case on hand, we find that the articulation as regards this public order facet of the preventive detention jurisprudence is in paragraph No.3 of the impugned detention order and relevant portion reads as follows:

'By committing the above described grave crime of criminal breach of trust, cheating and illegal trespassing, Thiru.Sridhar had created scare and feeling of insecurity in the minds of the general public, with intent to purchase a piece of land, using their hard earned money and the general public who have purchased the property, for their future and for the future of their wards and thereby acted in a manner prejudicial to the maintenance of public order.'

9. Before we proceed further, we make it clear that aforementioned three concentric circles theory has to be tested on a case to case basis.



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Therefore, this order will not serve as a precedent for all and every case of similar ground case allegation. On testing the case on hand on factual matrix, we find that prejudice to maintenance of public order has not been made out as there is nothing really in the impugned detention order to demonstrate that the ground case or the adverse case qua the detenu tantamounts to setting the cat among the pigeons. Absent such phenomenon, we are unable to persuade ourselves to believe that there is an element of prejudice to maintenance of public order qua impugned detention order. We have also taken into account the obtaining undisputed position that the detention orders clamped on the accused in the ground case whose confession has been put against the detenu as well as the co-accused in the ground case have all been set aside by Hon'ble predecessor Benches vide various orders in various HCPs, the details of which have been alluded to supra.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.06.2022 bearing reference No.147/BCDFGISSSV/2022 made by the second respondent is set aside and



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the detenu Thiru.Sridhar, son of Mr.Subramaniyan is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

11. Captioned HCP ordered on above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

07.02.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

To

1. State of Tamil Nadu
Rep. by Principal Secretary to Government
Home, Prohibition and Excise Department
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Puzhal, Chennai-600 066.
The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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