



WEB COPY



HCP No.1717 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1717 of 2022

Latha
W/o.Thiyagarajan

.. Petitioner
Wife of detenu

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 9
2. The Commissioner of Police
Greater Chennai
The Commissioner Office
Vepery, Chennai – 600 007
3. The Inspector of Police
Central Crime Branch
EDF-1 wing, Team-I
Chennai District
4. The Superintendent of Police
Central Prison – II, Puzhal
Chennai - 66

.. Respondents

Page Nos.1/12



HCP No.1717 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in BCDFGISSSV No.117 of 2022, dated 16.05.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Thiagarajan @ Rajan @ Selvarajan Thiagarajan S/o. Selvarajan, aged about 53 years, the detenu, now confined in Central Prison, Puzhal at Chennai before this Court and set him at liberty.

For Petitioner : Mr.K.Karthik

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'detention order dated 16.05.2022 bearing reference No.117/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the second respondent i.e., jurisdictional Commissioner of Police [hereinafter 'Detaining Authority' for the sake of brevity and convenience].

Page Nos.2/12



HCP No.1717 of 2022

2. In and by the impugned detention order, the detenu has been branded as 'Goonda' within the meaning of 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].

3. Mr. K. Karthik, learned counsel for petitioner and Mr. R. Muniyapparaj, learned State Additional Public Prosecutor, for all the four respondents are before us.

4. Notwithstanding very many averments in the support affidavit, one point on which the petitioner's campaign against the impugned detention order is predicated finds favour with us and that is, the impugned detention order does not pass the test of prejudice to maintenance of public order and detenu acting in a manner prejudicial to the maintenance of public order. There will be elaboration, discussion with dispositive reasoning *infra* in this order.



HCP No.1717 of 2022

5. As regards facts of the case, the ground case is set out in paragraph 4 and two adverse cases are set out in the form of a tabulation in the opening paragraph. The ground case is Crime No.180 of 2019 for alleged offences under Sections 406, 420, 465, 467, 468, 471 and 506(i) of 'Indian Penal Code, 1860 (Central Act 45 of 1860)' ['IPC' for brevity] on the file of Central Crime Branch (third respondent, who is the sponsoring authority).

6. As regards aforementioned point qua public order, the most relevant part of the impugned detention order is contained in paragraph 4 thereat and the relevant portion of paragraph 4 reads as follows:

'4.....I am fully satisfied that the above said Thiru.Thiagarajan @ Rajan @ Selvarajan Thiyagarajan is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.'

7. We find that there is no mention in the impugned detention order as to how public order has been adversely affected or as to how public order is likely to be adversely affected. As already alluded to supra, the detenu has been branded as a 'Goonda' and therefore, we deem it appropriate to extract



HCP No.1717 of 2022

and reproduce Section 2(f) of Act 14 of 1982 which defines 'Goonda' as well as Section 2(a)(iii) of Act 14 of 1982 which set outs the meaning of 'acting in a manner prejudicial to the maintenance of public order' qua a Goonda. The two provisions read as follows:

' Section 2(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 XV] 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);J'

Section 2(a)(iii)

Section 2.Definitions. 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 in making preparation for engaging, in any of this activities as a



WEB COPY



HCP No.1717 of 2022

goonda, which affect adversely, or are likely to affect adversely, the maintenance of public order;'

8. The aforementioned extract from the relevant portion of paragraph 4 of the impugned detention order does not elaborate on how public order has been adversely affected or how it is likely to be adversely affected.

9. This takes us to the question as to what exactly is public order and as to how it differs from law and order. For this legal drill, we deem it appropriate to refer to paragraphs 54 and 55 of ***Ram Manohar Lohia vs. State of Bihar and others*** reported in ***AIR 1966 SC 740*** 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 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



WEB COPY



HCP No.1717 of 2022

"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.'

10. To be noted, aforementioned paragraph 54 takes an illustrative approach and paragraph 55 propounds the three concentric circle doctrine. As the aforesaid paragraphs are elucidative, we deem it appropriate to not to elaborate further. It will suffice to say that the simple question which we need to pose to ourselves is, whether the criminal law in vogue i.e., the criminal law other than preventive detention is good enough to contain the situation? If the answer is in the affirmative, the impugned detention order deserves to be interfered with and dislodged. In the case on hand, the answer is clearly in the affirmative as there is nothing really to show how public order is likely to be adversely affected and as to how the existing



HCP No.1717 of 2022

criminal law is not good enough to contain the situation. To be noted, we are informed that even in the ground case charge sheet has not yet been filed. This buttresses this phenomenon in another facet. That facet is resorting to preventive detention without enforcing normal criminal law with diligence. The reason is this tantamounts to punishment without trial as preventive detention is not a punishment.

11. The sequitur of discussion and dispositive reasoning thus far is, we find that the impugned detention order does not pass muster qua detenu acting in any manner prejudicial to maintenance of public order. This is with a caveat. We make it clear that this point /phenomenon has to be tested on a case to case basis and there cannot be any general rule or straight jacket formula.

12. In the case on hand, we tested the matter based on the impugned detention order and materials before us in the case file and as already alluded to supra, we find that the impugned detention order does not pass muster qua detenu acting in any manner prejudicial to maintenance of public order.



HCP No.1717 of 2022

13. Apropos, the impugned detention order dated 16.05.2022 bearing reference No.117/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Thiyagarajan @ Rajan @ Selvarajan Thiyagarajan S/o. Mr.Selvarajan, male, aged 53 years, now detained in Central Prison, Puzhal is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCP ordered on above terms.

(M.S.,J.)

(M.N.K.,J.)

21.02.2023

Index: Yes

Internet: Yes

Neutral Citation : Yes

gpa

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



HCP No.1717 of 2022

To

WEB COPY

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 9
2. The Commissioner of Police
Greater Chennai
The Commissioner Office
Vepery, Chennai – 600 007
3. The Inspector of Police
Central Crime Branch
EDF-1 wing, Team-I
Chennai District
4. The Superintendent of Police
Central Prison – II, Puzhal
Chennai - 66
5. The Public Prosecutor
High Court, Madras.



WEB COPY



HCP No.1717 of 2022

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

gpa

H.C.P.No.1717 of 2022

21.02.2023

Page Nos.12/12