



HCP(MD)No.459 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.459 of 2023

Sivakumar

.. Petitioner / father of the
detenu

Vs.

1.The Principal Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Madurai City
Madurai District

3.The Superintendent of Prison,
Central Prison
Madurai District.

4.The Inspector of Police
Thallakulam Police Station,
Madurai City
Madurai District

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records, relating to the detention of the petitioner's son namely Muthu Navesh (detenu) S/o.Sivakumar aged 21 years under the Tamil Nadu Act 14 of 1982 vide detention order dated 21.11.2022 made in No.83/BCDFISSSV/2022 passed by the 2nd respondent herein and quash the same as illegal and consequently direct the respondents herein to produce the person or body of the detenu now confined at Central Priso, Madurai before this Court and thereafter set him at liberty.

For Petitioner : Mr.C.Vivekanandan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Muthu Navesh aged about 21 years, S/o.Sivakumar. The detenu has been detained by the second respondent by his order in No.83/BCDFISSSV/2022 dated 21.11.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil



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Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner mainly focus his arguments on the following grounds:

(i) the detaining authority was swayed by the fact that the relatives of detenu are attempting to file a bail petition and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.4 of the order is not supported by any materials; and

(ii) the detaining authority, after being aware of the fact that the bail applications filed by the detenu were dismissed, came to the conclusion that there is a real possibility of the detenu coming out on bail by relying upon the order passed in CrI.M.P.No.404/2017. The learned counsel therefore



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submitted that the order that was relied upon by the detaining authority was not a similar and the offence involved therein is under Section 307 IPC.

On both these grounds, the detention order is liable to be interfered with, he contended.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.

5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

6. The detaining authority has considered the fact that the relatives of the detenu is attempting to file a bail petition before the competent Court. Therefore, the detaining authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail.



7. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any materials that has been placed before the detaining authority. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred supra.

8. The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.



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26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a



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reasonable nexus with the purpose for which the order is passed.”

9. It is clear from the above that the detenu is in custody and after dismissal of the earlier bail applications, he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority. Hence, the same reflects non application of mind on the part of the detaining authority. It is also to be noted that the detaining authority took into consideration the order passed in CrI.M.P.No.404/2017 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the accused therein had already suffered 45 days incarceration, the injured has been discharged from the hospital and the offences were also under Sections 147, 148, 448, 294(b), 323, 324, 506(ii), 307 IPC and Section 4 of TNPHW Act. However, in the present case, the FIR was registered for offences under Sections 143, 448, 294(b), 268, 323, 308 and 506(ii) IPC and Section 4 of TNPHW Act and hence, the bail order that was relied upon by the detaining authority cannot be considered to be a similar one.



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10. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.83/BCDFISSSV/2022 dated 21.11.2022 passed by the second respondent is set aside. The detenu, viz., Muthu Navesh S/o.Sivakumar, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

12. At this juncture, we noticed that for a trivial nature of offence, the petitioner herein, who is a college student, along with other students like that of the petitioner herein have been slapped with detention order under Act 14 of 1982. Hence, we are of the view that though the offender can be termed as a Goonda, even for an involvement in a solitary case, the nature of the commission of offence and the overt act attributed to the offender also gains significance for the purpose of such consideration, while such detention orders are passed. In this regard, the learned Additional Public



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Prosecutor seeks time to place his arguments. Hence, list the matter on
01.08.2023.

(M.S.R.,J.) (M.N.K.,J.)
20.07.2023

Internet : Yes

RR

To

- 1.The Principal Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Joint Secretary to Government
Public (Law and Order)
Secretariat, Chennai.
- 3.The Commissioner of Police,
Madurai City
Madurai District
- 4.The Superintendent of Prison,
Central Prison
Madurai District.
- 5.The Inspector of Police
Thallakulam Police Station,
Madurai City, Madurai District
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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and
M.NIRMAL KUMAR,J.

RR

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H.C.P.(MD)Nos.2069, 2119 & 2120 of 2022 and 459 of 2023

M.S.RAMESH, J.

and

M.NIRMAL KUMAR, J.

COMMON ORDER

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

These Habeas Corpus Petitions are listed today under the caption "for further hearing".

2. On 20.07.2023, we had set aside the detention orders predominantly on the ground that the detaining authority was swayed away by the fact that the relatives of the detenus are attempting to file bail petition, which aspect was not supported by any materials and hence, the subjective satisfaction arrived at by the detaining authority was found fault with. The detaining authority had also taken note of the comparison of similar case, through which, he was of the view that there is every likelihood for the detenus coming out on bail, while the fact remained that the similar case, was not a similar to that of the ground case, in which, the detenus were involved.



3. While passing such orders, we had noticed that the detenus were college students, against whom, the detention orders were passed. Since their involvement was only in a solitary case, we had called upon the learned Additional Public Prosecutor to address this aspect, in the light of the decisions of the Hon'ble Supreme Court in **Banka Sneha Sheela vs. State of Telangana and others** reported in **2021 (9) SCC 415**, as well as in the case of **Yumman Ongbi Lembi Leima vs. State of Manipur and others** reported in **2012 (2) SCC 176**.

4. The learned Additional Public Prosecutor had referred to a portion of the detention order, whereby, the detaining authority had arrived at the subjective satisfaction for passing the detention orders. A perusal of the same would reveal that the detaining authority had taken into consideration the investigation that was pending in the ground case in Crime No.789 of 2022 for the offences under Sections 143, 448, 294(b), 268, 323, 308 and 506(ii) I.P.C. and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 read with Section 188 of the Motor Vehicles Act, 1988, altered into Sections 143, 448, 294(b), 268, 323, 308 and 506(ii) I.P.C. and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002



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read with Section 188 of the Motor Vehicles Act, 1988 and Section 83(ii) of the Juvenile Justice (Care and Protection of Children) Act, 2015. In the detention orders, the detaining authority had referred to an occurrence on 30.10.2022 at about 12.20 hours, which day is celebrated as "Thevar Jayanthi", wherein the detenus, along with others, had recklessly driven two wheelers and trespassed into a Ladies College. The detaining authority had also taken note of the fact that the watchman of the College, who had tried to prevent them, was assaulted and pushed down. During this ruckus, the College girl students had run helter-skelter out of fear and the public, who were nearby, had raised alarms. The presence of the detenus and others had caused fear among the vehicle riders, who were passing that way, as well as the general public on that area and therefore, the detention orders were passed against the detenus.

5. The issue before us is, as to whether such an act would affect even the tempo of life and jeopardize the public order.



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6. In view of the act of the detenus, as evidenced in the grounds of detention, the College girl students and the general public in the vicinity, were put to danger and fear and thereby, the public tranquility in that area was affected. Such an act would amount to disturbance to public order.

7. The Hon'ble Supreme Court in the case of **Arun Ghosh vs. State of West Bengal** reported in **1970 (1) SCC 98** had taken cognizance of such acts and held that the past activities of the detenu, as revealed in the grounds of detention, would affect the maintenance of public order and had upheld the order of detention. In the same order, the Hon'ble Supreme Court had also referred to instances, where a man malice the girls in a public place, which disturbs the Society and Community and consequently held that the tempo of life, which is an essential requirement to public order, would be affected. The relevant portion of the said judgment reads as follows:-

"3. In Dr.Ram Manohar Lohia case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even



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tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the



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management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society."



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8. On a conjoint reading of the above said decision of the Hon'ble Supreme Court, along with the observations made by us, apart from the subjective satisfaction arrived at by the detaining authority, we are of the affirmed view that the detenus herein had involved in acts, that disturbs the public order and accordingly, the purpose of which the matters are listed today is met. However since, we had earlier interfered with the detention orders on other grounds, based on which, the detenus have also been set free, the present order shall not be detrimental to their release. Accordingly, these Habeas Corpus Petitions stand closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SMN2

[M.S.R., J.]

[M.N.K., J.]

01.08.2023



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

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COMMON ORDER MADE IN
H.C.P.(MD)Nos.2069, 2119 & 2120 of 2022 and 459 of 2023

DATED : 01.08.2023