



HCP(MD)No.828 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.828 of 2023

Esakki Subbiah Dass

: Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.24/BCDFTISSSV/2023 dated 17.04.2023



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on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Esakki Subbiah Dass, aged about 24 years, S/o.Nellaiappan, now detained at the Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty forthwith.

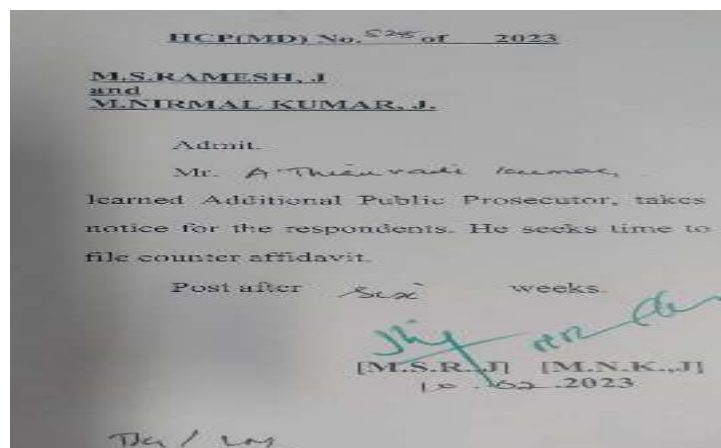
For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was listed in the Admission Board on 10.07.2023 before Hon'ble Coordinate Division Bench and the following order was made:





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2. Therefore, in this final order, it has become necessary to set out factual matrix in a nutshell.

3. Captioned HCP has been filed by the detenu assailing a 'preventive detention order dated 17.04.2023 bearing No. 24/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent but we find that 'Station House Officer of Tirunelveli Junction Police Station' is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

4. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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5. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.79 of 2023 on the file of Tirunelveli Junction Police Station registered under Sections 341, 294(b), 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] which was subsequently, altered into Sections 341, 294(b), 324, 307 and 506(ii) IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of 'Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015' [hereinafter 'SC/ST PoA Act' for the sake of convenience and clarity] and later altered into Sections 341, 294(b), 324, 307, 506(ii), 147, 148 and 120(B) of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST PoA Act. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

6. Mr.N.Pragalathan, learned counsel on record for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



7. When the captioned HCP was in the final hearing board in 16.10.2023 listing, the following proceedings were made:

'Mr.N.Pragalathan, learned counsel for HCP petitioner commenced his submission by saying that subjective satisfaction arrived at by the Detaining Authority is impaired, as the detenu has not moved any bail application in the solitary case, which constitutes the substratum of the impugned preventive detention order. Learned counsel submitted that without any statement from any relative and/or any special report from the Sponsoring Authority such subjective satisfaction has been recorded.

*2. Learned Additional Public Prosecutor submitted that post **Rekha's case (Rekha Vs. State of Tamil Nadu reported in (2011) 5 SCC 244)** there have been two other judgments rendered by Hon'ble Supreme Court and wanted to make submissions.*

3. List on 30.10.2023.'

8. However, today, Mr.N.Pragalathan, learned counsel for HCP petitioner changed his line of attack and submitted that impugned preventive detention order does not pass muster qua acting in any manner prejudicial to the maintenance of public order. In other words, it is the pointed argument of learned counsel for HCP petitioner that there is nothing to demonstrate that detenu in the case on hand has acted in any manner



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prejudicial to the maintenance of public order. Learned counsel emphasised that impugned preventive detention order in the captioned HCP has been made on the basis of a solitary case. To put it differently one solitary case constitutes the substratum of the impugned preventive detention order is learned counsel's say.

9. In response to the public order point, learned Additional Public Prosecutor drew our attention of this Court to the following portion of the grounds of impugned preventive detention order in sub-paragraph (i) of paragraph 2 thereat. This portion of paragraph 2(i) of grounds of impugned preventive detention order reads as follows:

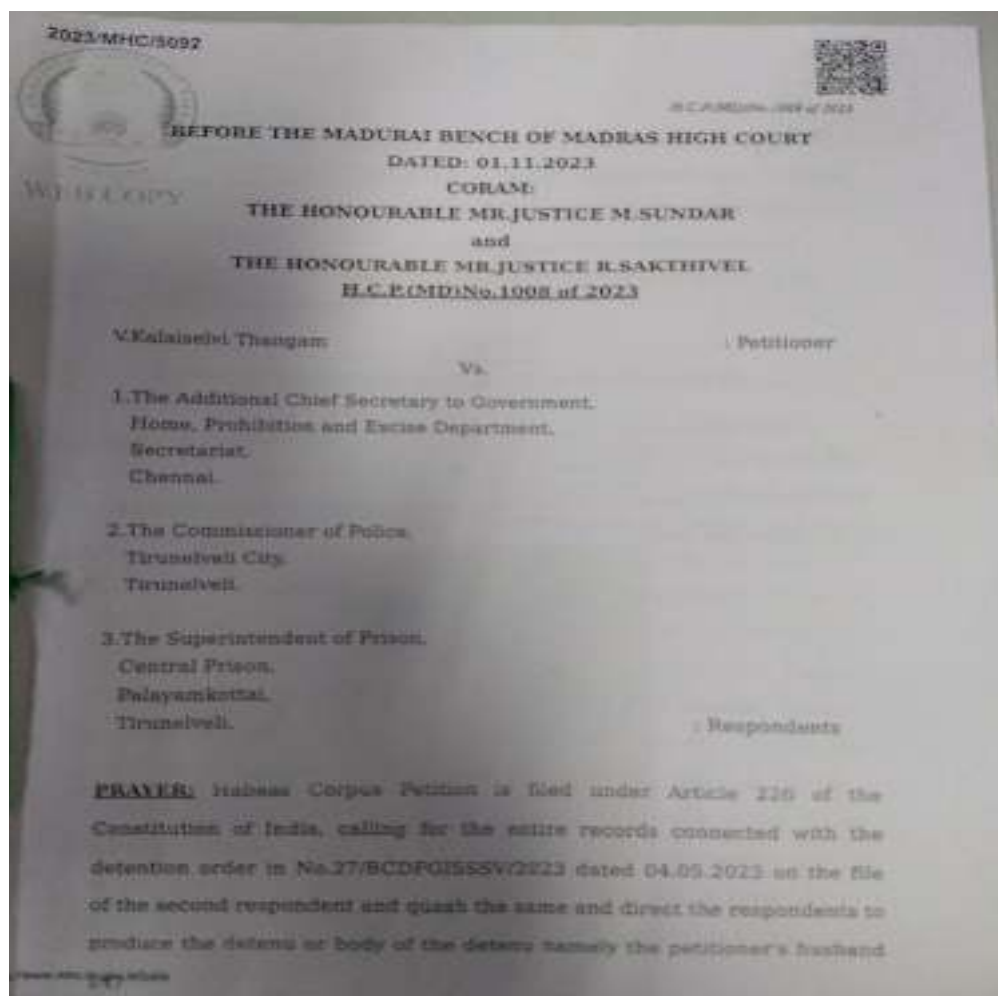
'.....On seeing this, those who were in the houses of that street closed their house doors hastily out of fear. Those who were going by that street scattered and ran towards all the four directions.....'

10. Learned Additional Public Prosecutor submitted that the aforementioned two sentences in the grounds of impugned preventive detention order are good enough to demonstrate that the detenu has acted in a manner prejudicial to maintenance of public order.



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11. Learned counsel for HCP petitioner responding to the above argument pressed into service *V.Kalaiselvi Thangam's* case [*V.Kalaiselvi Thangam Vs. The Additional Chief Secretary to Government and two others*] reported in 2023/MHC/5092 [*H.C.P.(MD)No.1008 of 2023, dated 01.11.2023*]. A scanned reproduction of *Kalaiselvi Thangam's* case as reported in Nuetral Website portal of this Court is as follows:

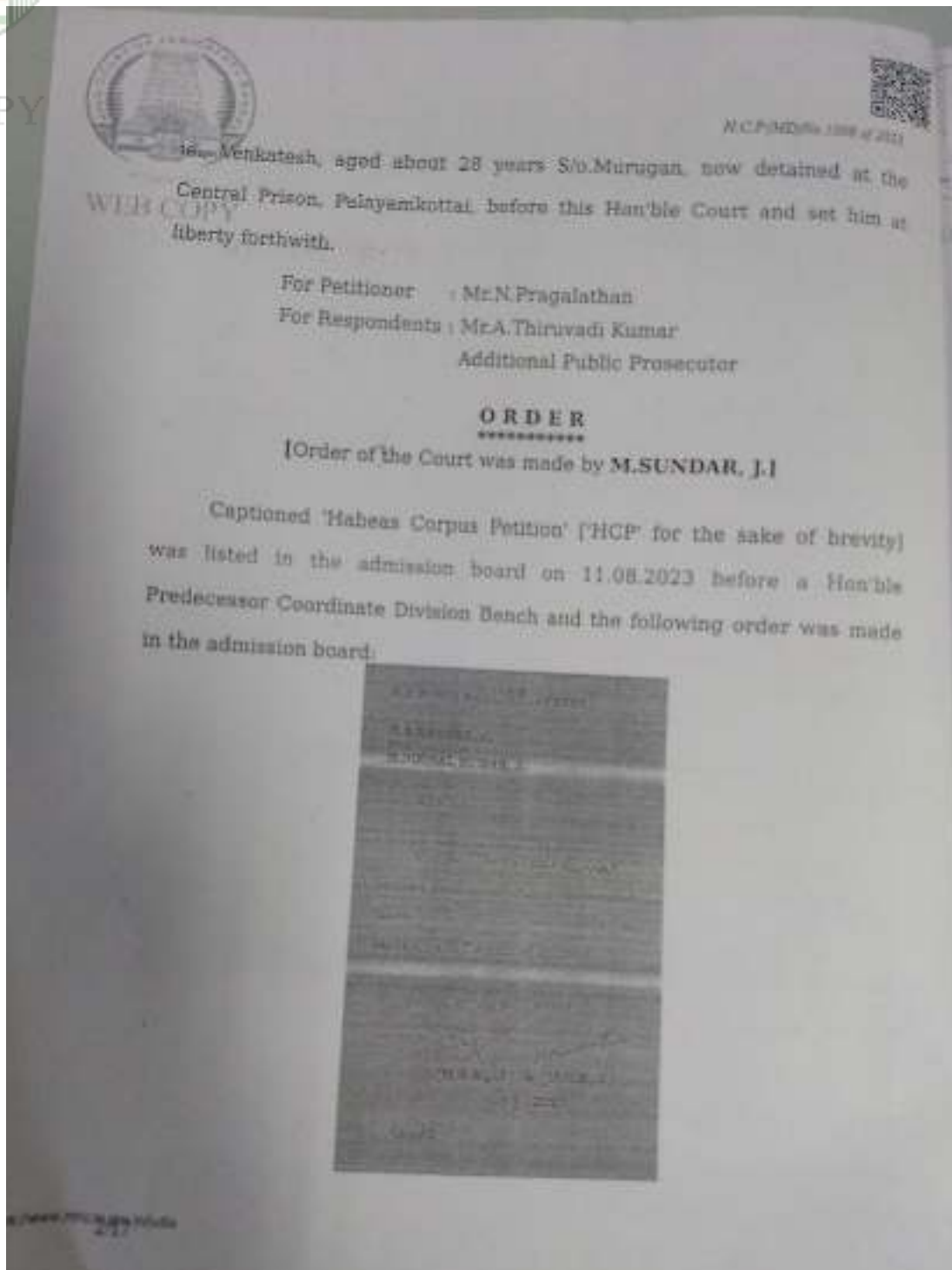




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2. Therefore, this Court deems it appropriate to set out factual matrix in a nut shell. To be noted, captioned HCP is now in the final hearing stage. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvani Kumar, learned State Additional Public Prosecutor for all respondents are before us.

3. Factual matrix in a nut shell is that HCP petitioner's husband one Thiru.Venkatesh has been detained vide a Preventive Detention Order dated 04.05.2023 bearing reference No.27/BCDFG1SSSV/2023 made by the second respondent [to be noted, '04.05.2023 preventive detention order' shall be referred to as 'impugned preventive detention order' and the second respondent shall be referred to as 'detaining authority', both for the sake of convenience and clarity]; that impugned preventive detention order has been made under 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 brevity, convenience and clarity] branding the HCP petitioner's husband 'HCP petitioner's husband' shall hereinafter be referred to as 'detenu' for the sake of convenience] as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982; that captioned HCP has been filed in this Court on



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09.08.2023 and admitted on 11.08.2023 vide aforementioned admission board order [scanned and reproduced supra] that captioned HCP is now in the final hearing board as already alluded to supra.

4.MAN.Pragalathan, learned Counsel for HCP petitioner in his campaign against the impugned preventive detention order submitted that the impugned preventive detention order has been made on the basis of a solitary case. It was pointed out that the solitary case is Crime No.195/2023 on the file of Melapalayam Police Station for alleged offences under Sections 341, 294(b), 324, 307, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No.33 of 1989)' [hereinafter 'SC & ST (PoA) Act' for the sake of brevity and convenience] altered into Sections 341, 294(b), 324, 307, 506(i), 120(B), 212 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of SC & ST (PoA) Act. It was submitted that as regards the ground case, the same is now pending vide S.C.No.116/2023 on the file of Additional District Judge's Court (Special Court for SC & ST cases), Tirunelveli, which means the regular law and order mechanism has been set into motion and is operating. In this scenario learned Counsel submitted that there is nothing to demonstrate that the detenu has acted in any manner prejudicial to maintenance of public order.

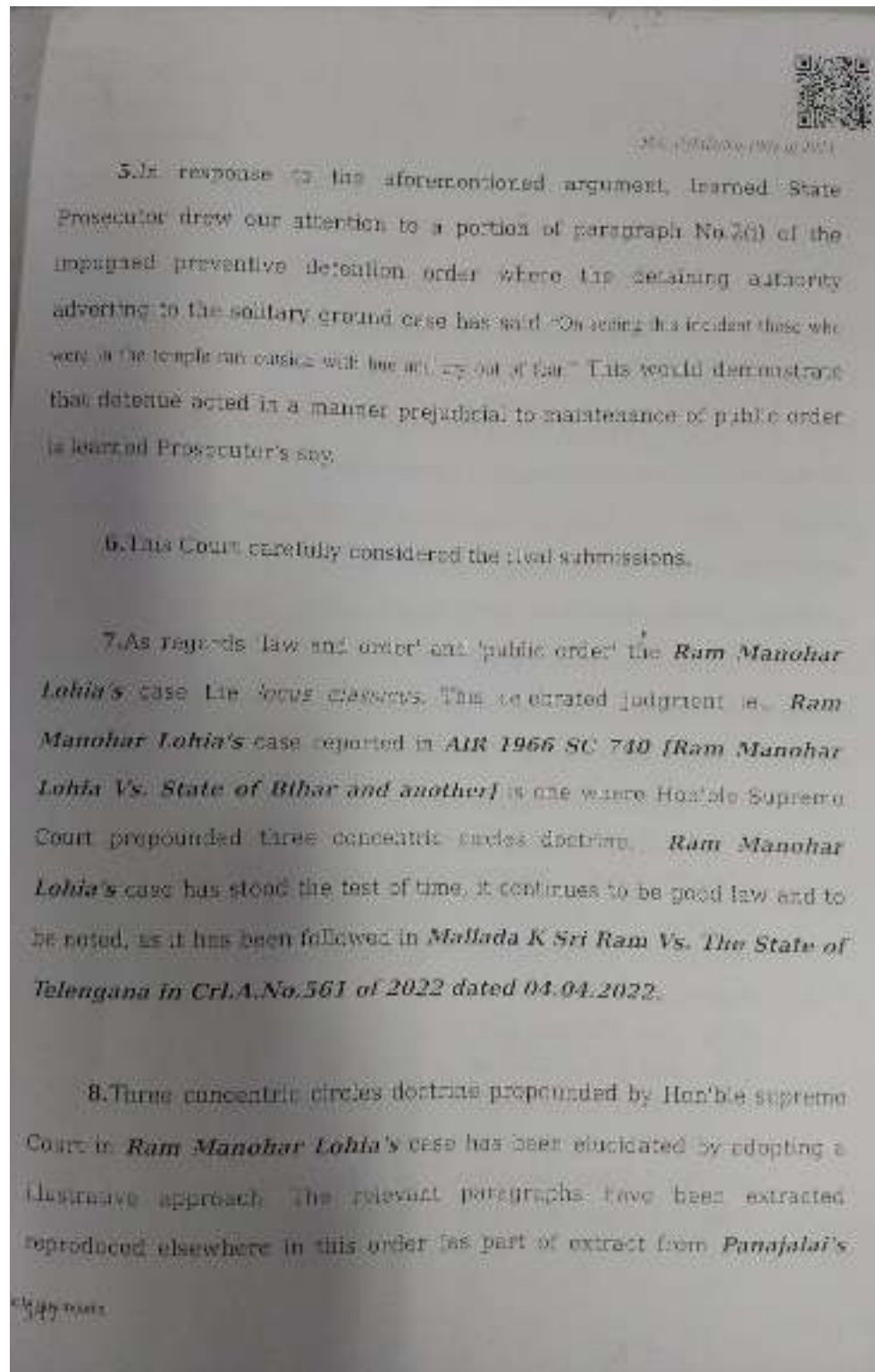
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Be that as it may, this *Ram Manohar Lohia* principle is instructive and we respectfully follow the same. When we apply the three concentric circles doctrine and illustration of the Hon'ble Supreme Court to the case on hand we find that the matter has not moved from the first larger concentric circle of 'law and order' to the next concentric circle of 'public order' as there is nothing to demonstrate that the defenu has engaged or is making preparations for engaging in any activities as a 'Goonda' which will adversely affect or is likely to affect adversely the maintenance of public order. The reason is, as already alluded to the impugned preventive detention order has been clamped by resorting to Act 14 of 1982 in which the term 'Goonda' has been defined vide Section 2(f) and the expression 'acting in a manner prejudicial to the maintenance of public order' has been defined vide 2(a) - (2)(a)(ii) is qva Goonda], which read as follows:

'Section 2. Definitions. - ...

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 XVI other than Sections 354, 375, 375-A, 376-B, 376-0C, 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);

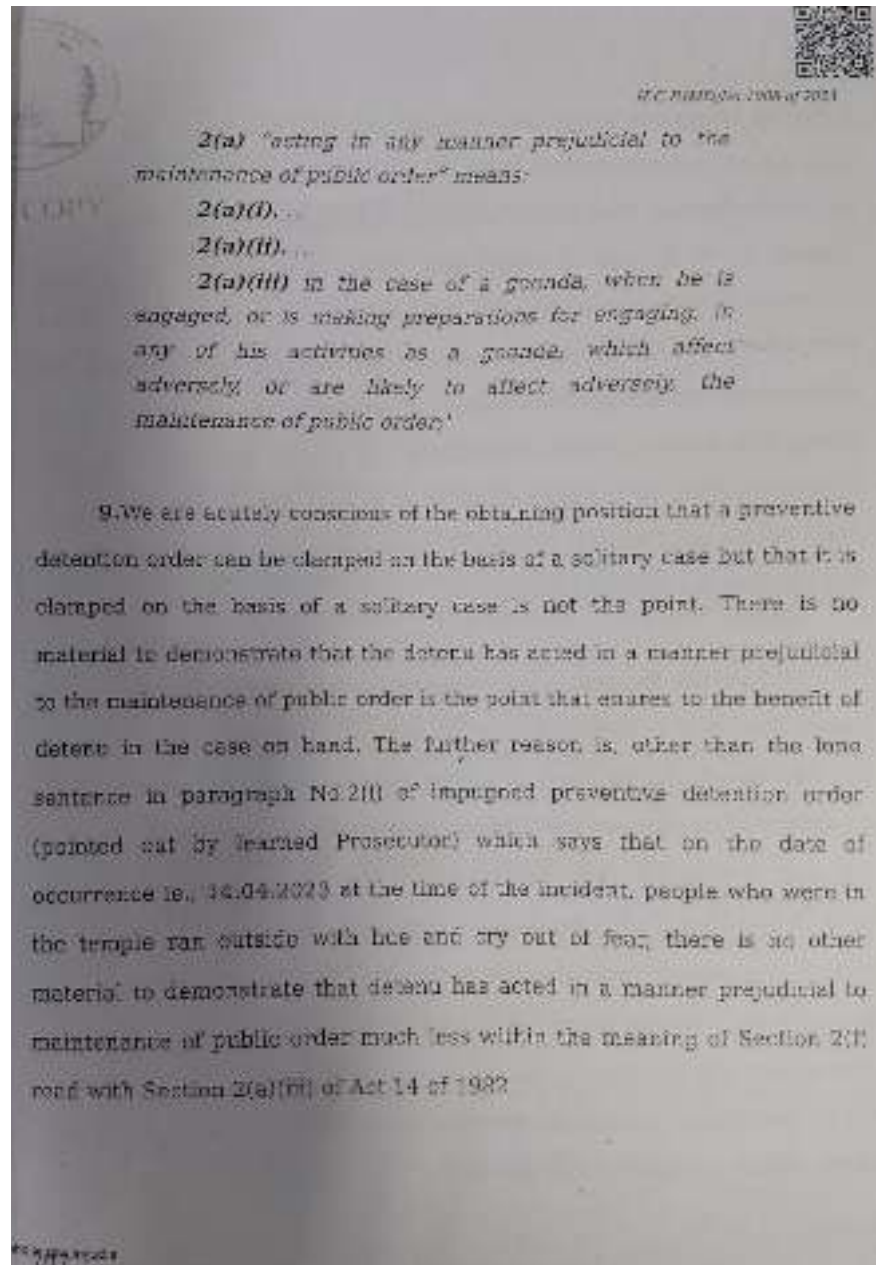
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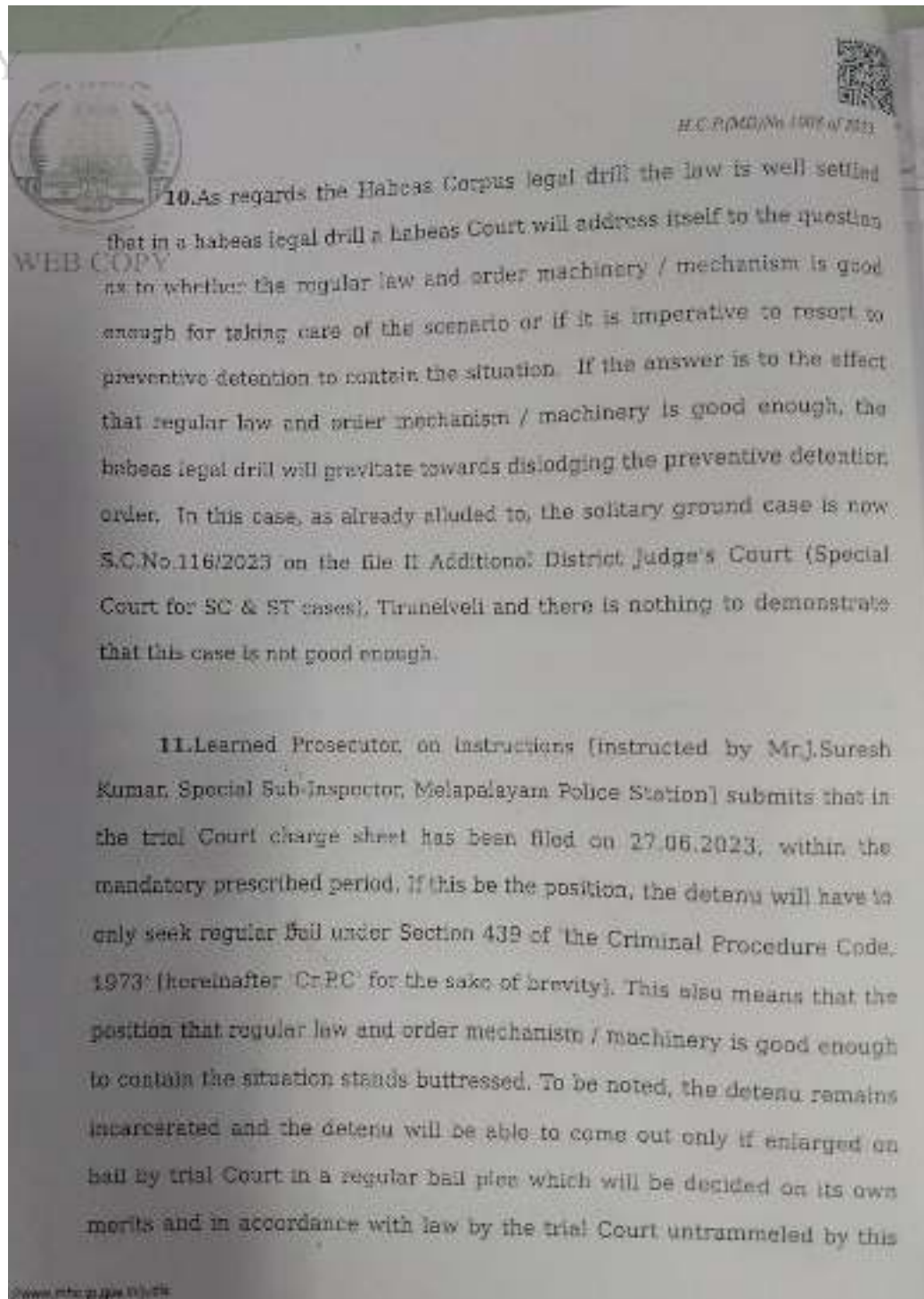
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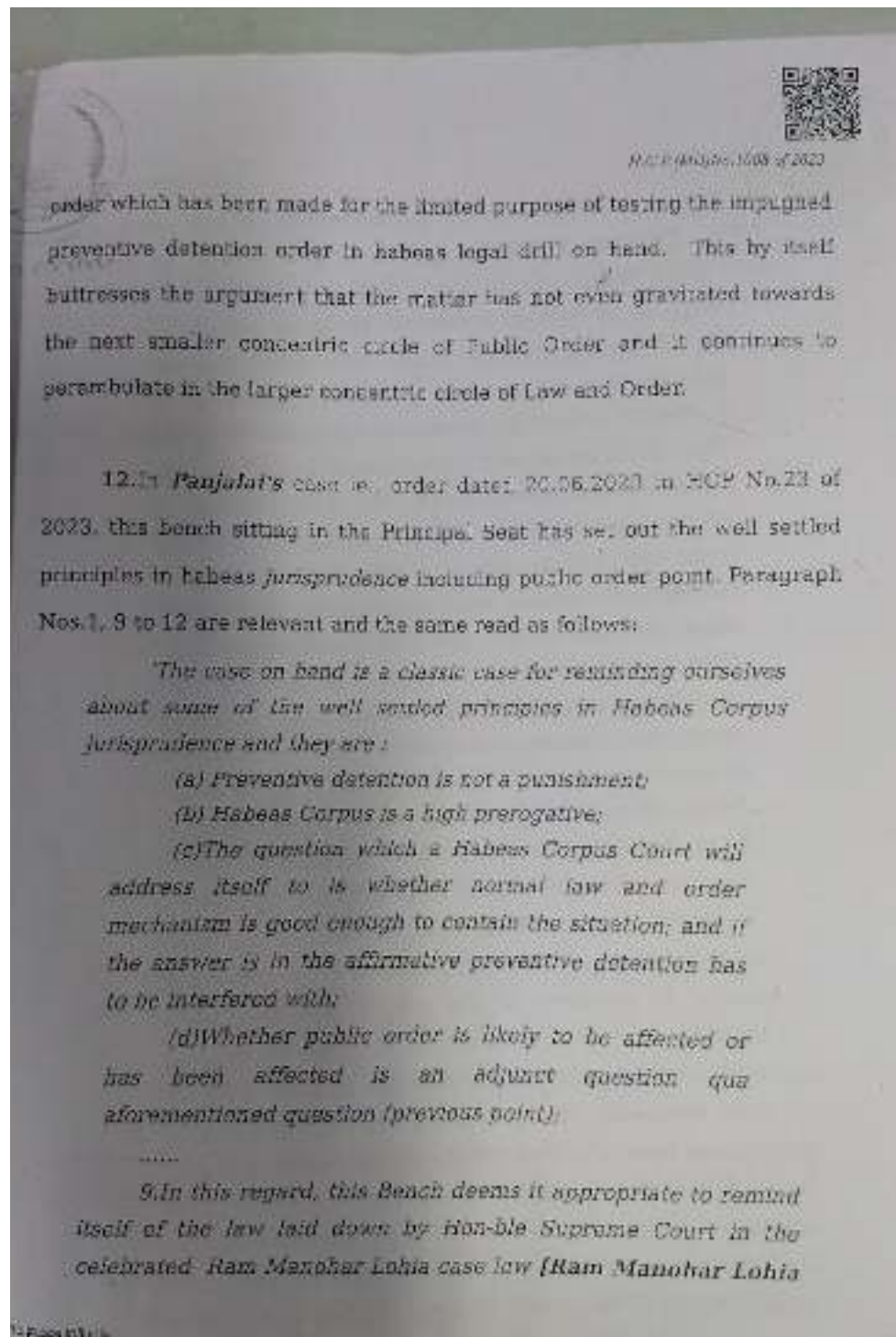




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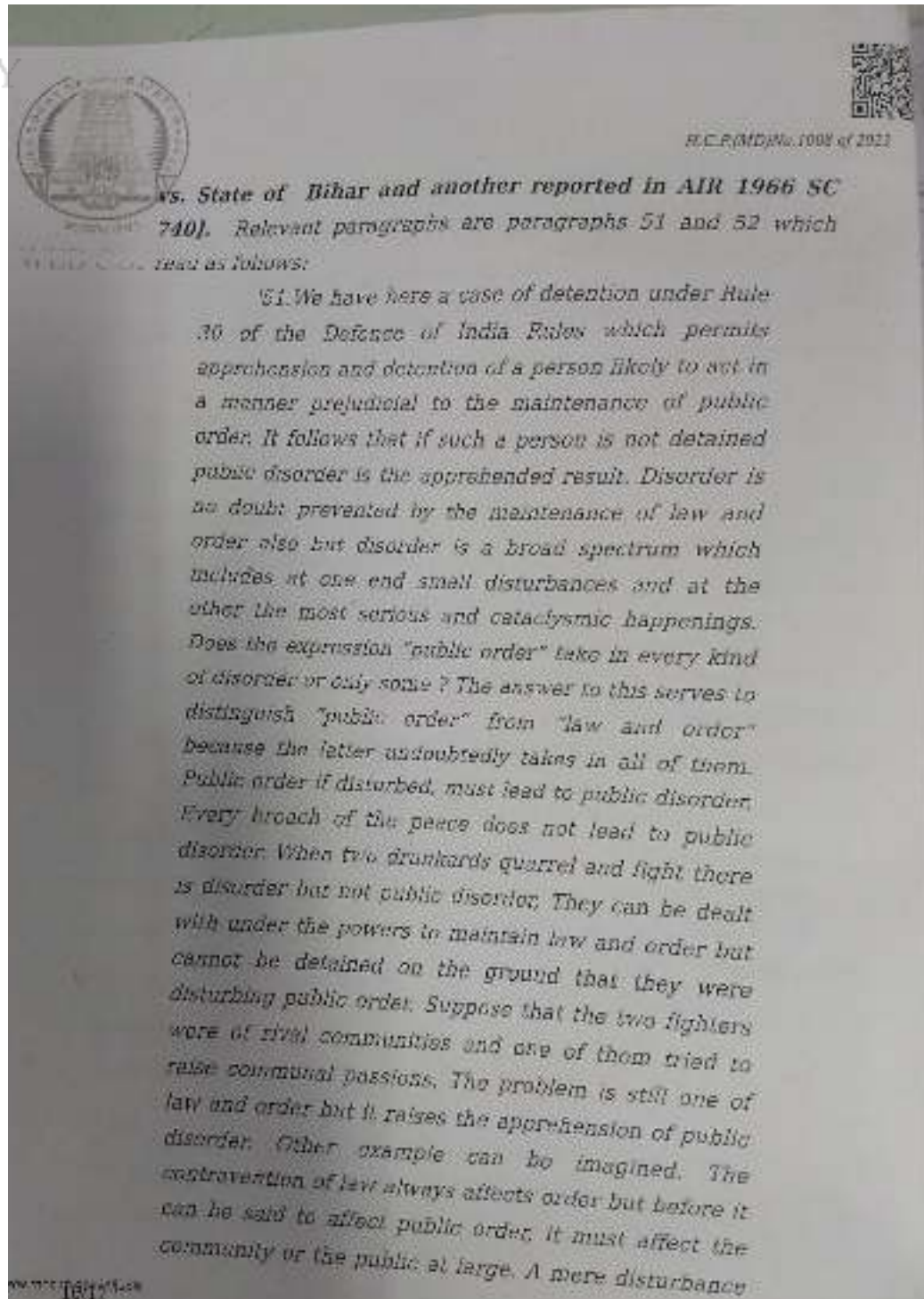
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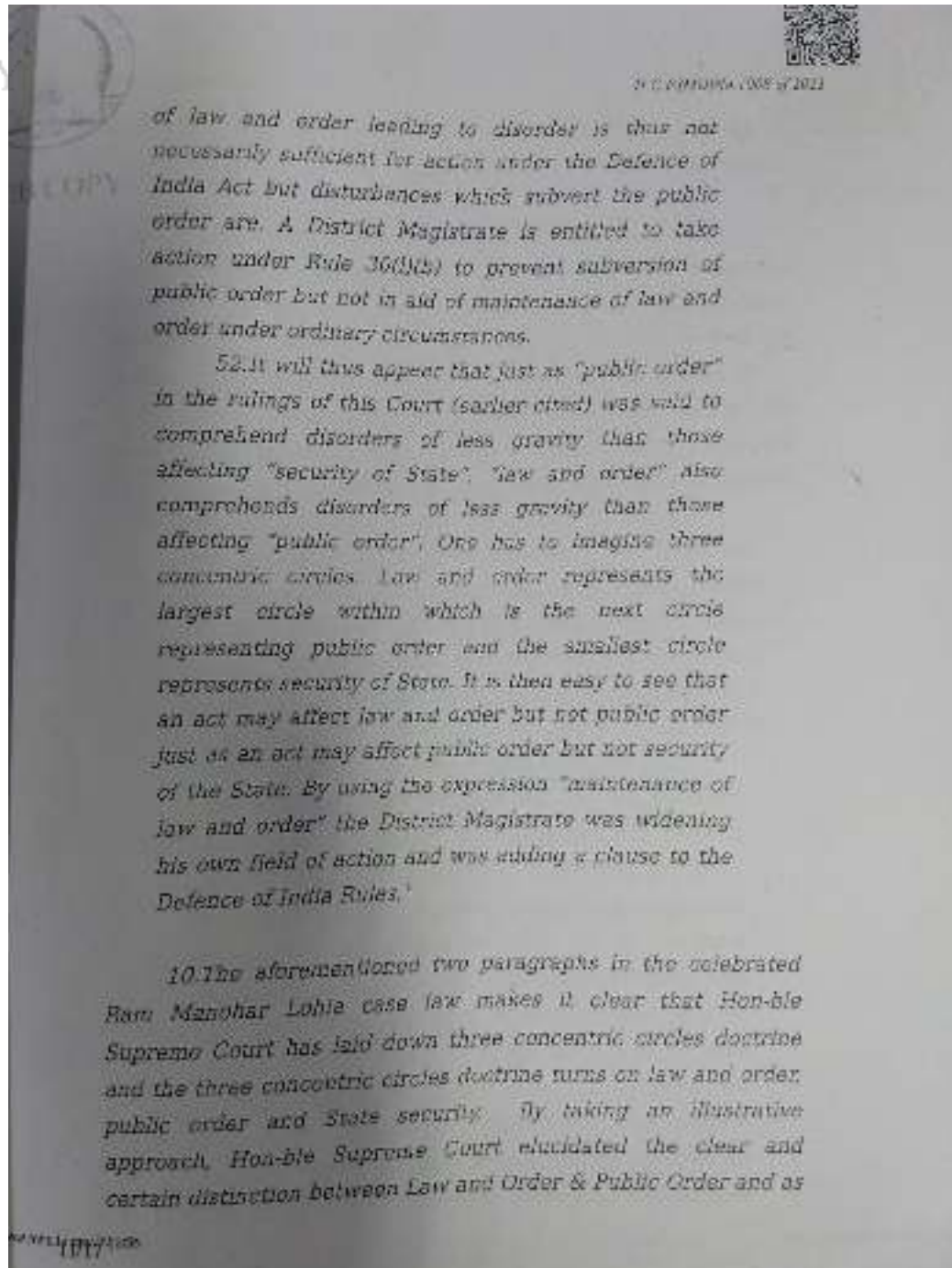




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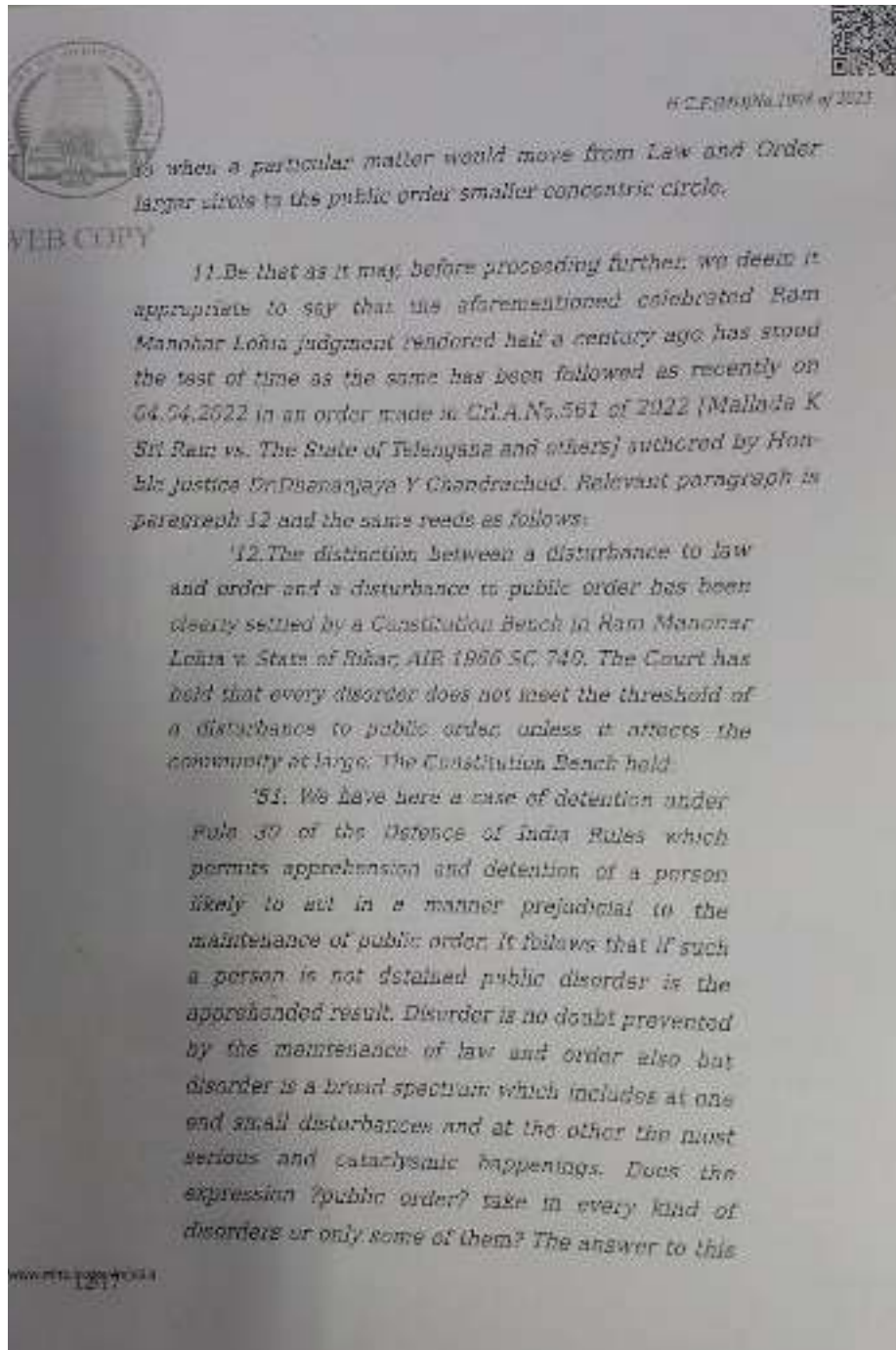




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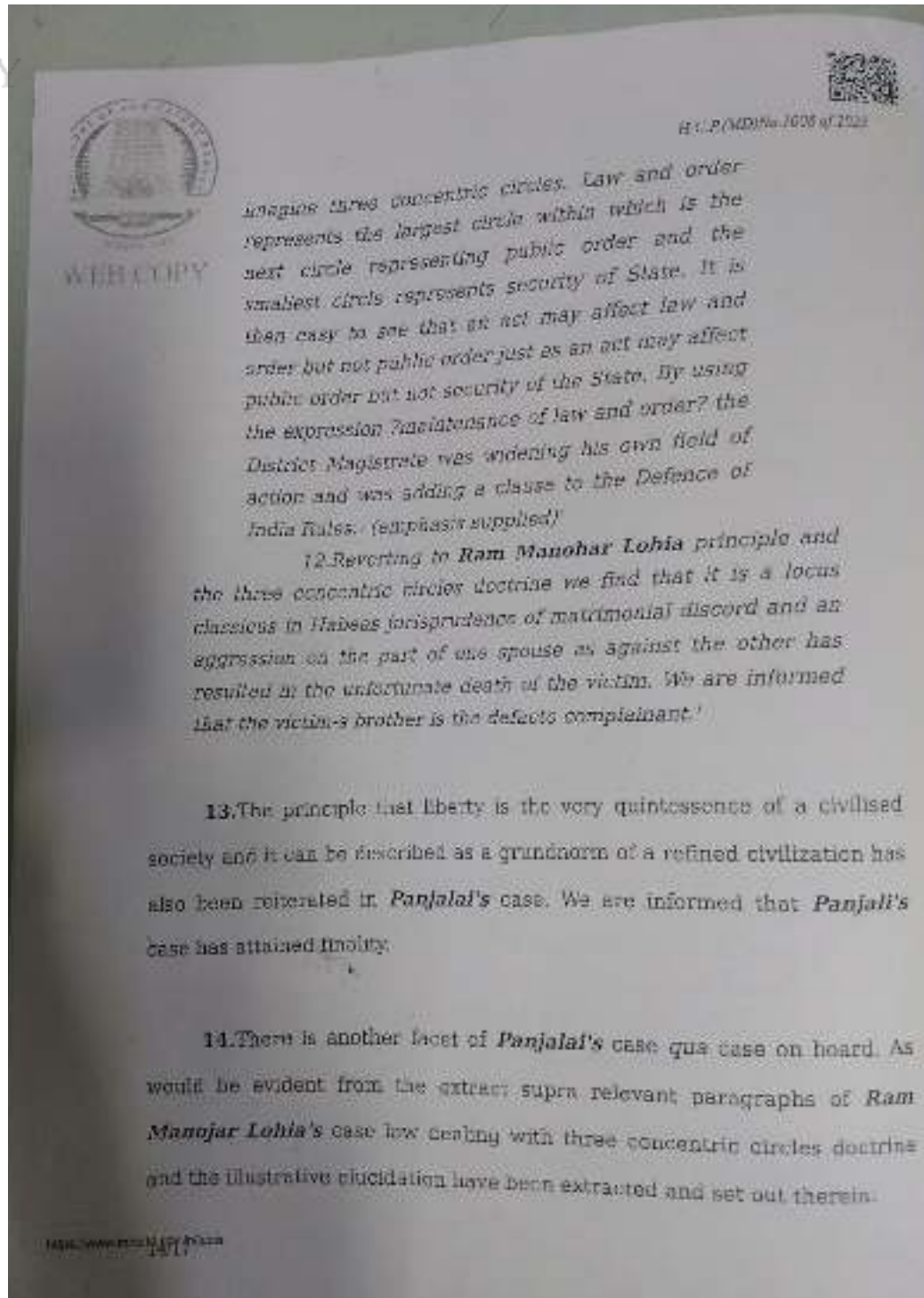
serves to distinguish 'public order' from 'law and order' because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. 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 examples 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(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. 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



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15. In the light of the narrative thus far, the inevitable sequitur is, captioned HCP and the impugned preventive detention order are not matters which qualify as a case in which the detenu has acted in a manner prejudicial to maintenance of public order within the meaning of Section 2(a)(ii) r/w. Section 2(f) of Act 14 of 1982. The further sequitur is impugned preventive detention order becomes vitiated and vulnerable for being dislodged in this habeas legal drill.

16. Ergo, the sum sequitur is, captioned HCP is allowed, impugned preventive detention order dated 24.05.2023 bearing reference No.27/BCDFGISSW/2023 made by the second respondent is set aside and the detenu Thiru.Venkatesh, male, aged 28 years, son of Thiru.Muragan, 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.]
01.11.2023

Index : Yes
Internet : Yes
Neutral Citation : Yes
MR
PS: Registry to forthwith communicate this order to jail authorities in Central Prison, Palayamkottai.

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12. We have carefully considered the rival submissions.

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13. We find that in *Kalaiselvi Thangam's* case, there was only one sentence in the grounds of impugned preventive detention order which says that 'On seeing this incident those who were in the temple ran outside with hue and cry out of fear'. To be noted, this is extracted and reproduced in paragraph 5 of *Kalaiselvi Thangam's* case. In the case on hand, the aforementioned two sentences pointed out by learned Additional Public Prosecutor find place in paragraph 2(i) of the grounds of impugned preventive detention order. In all other aspects, *Kalaiselvi Thangam's* case and the case on hand are clearly comparable. Therefore, applying *Kalaiselvi Thangam's* case principle, we conclude that the impugned preventive detention order is liable to be dislodged on the ground that it does not pass muster when it comes to the question as to whether there is enough material to demonstrate that the detenu has acted in any manner prejudicial to the maintenance of public order within the meaning of Section 2(a)(iii) of Act 14 of 1982.



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14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference No. 24/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Esakki Subbiah Dass, male, aged 24 years, son of Thiru.Nellaiappan, 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.]
20.11.2023

Index : Yes

Neutral Citation : Yes

vsm

Post Script:

(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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M.SUNDAR, J.

and

R.SAKTHIVEL, J.

vsm

To

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

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20.11.2023