



HCP(MD)No.1119 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.1119 of 2023

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... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600009.

2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.

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

4. The Superintendent of Police,
Trichy District,
Trichy.

5. The Inspector of Police,
Ganesh Nagar Police Station,
Trichy District.
Cr.No.374/2022

... 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 entire records, connected with the detention order of the respondent No.2 in Detention Order No.P.D.O.10/2023 dated 19.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Durai @ Duraisamy, son of Nagarathinam, aged about 27 years, now confining as "GOONDA" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Murugesan for
Mr.K.Suyambulinga Bharathi
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 31.08.2023 by the mother of detenu assailing a 'preventive detention order dated 19.04.2023 bearing reference No.P.D.O.10/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent / District Magistrate and District Collector' [hereinafter 'detaining authority' for the sake of convenience and clarity].



2. Impugned preventive detention order has been clamped on the HCP petitioner's son one Durai @ Duraisamy son of Thiru.Nagarathinam 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.

3. The substratum of impugned preventive detention order is largely constituted by three cases i.e., two adverse cases and one ground case. First adverse case is Crime No.55 of 2018 on the file of Government Hospital Police Station, Tiruchirappalli City, for alleged offences *inter alia* under Sections 147, 148, 294(b), 302, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered as Sections 120(b), 147, 148, 294(b), 302, 506(ii) read with 34 and 109 of IPC [alleged occurrence on 03.02.2018], second adverse case is Crime No.665 of 2022 on the file of Woraiyur Police Station, Tiruchirappalli City, for alleged offences *inter alia* under Sections 454, 457 and 380 of



IPC [alleged occurrence on 12.06.2022 and 17.06.2022] and the ground case is Crime No.374 of 2022 on the file of Gandhi Nagar Police Station for alleged offences *inter alia* under Sections 147, 148, 341, 294(b), 302 and 506(ii) of IPC altered as 147, 148, 341, 294(b), 302 and 506(ii) of IPC read with Section 3(1)(V) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Amendment Act, 1989 [alleged occurrence on 12.12.2022]. The detenu was arrested and released on bail as regards the first adverse case is what this Bench is informed in the final hearing. As regards the second adverse case, the detenu was arrested on 20.02.2023. In the FIR *qua* ground case which is dated 12.12.2022, the detenu was not named but it subsequently emerged / came to light that detenu is involved in the ground case and therefore, a P.T warrant arrest i.e., formal arrest of a person who is already an arrestee was made *qua* ground case on 22.03.2023. In this scenario, the impugned preventive detention order was clamped on 19.04.2023.

4. As already alluded to supra, captioned HCP was filed in this Court on 31.08.2023, it was listed in the admission board on 07.09.2023 and a Hon'ble Predecessor Coordinate Bench made the following order in the admission board and the same reads as follows:



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

Admit.

Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor takes notice for the respondents. He seeks time to file counter affidavit.

Post after six weeks.'

5. In the final hearing, today, Mr.M.Murugesan, learned counsel representing the counsel on record for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for all the five respondents are before us.

6. Though very many points have been raised in the support affidavit *qua* captioned HCP, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on one main point and that one main point is the detaining authority has not recorded subjective satisfaction as regards imminent possibility of detenu being enlarged on bail though the detaining authority in the impugned preventive detention order has repeatedly recorded the fact that the detenu has not moved bail petition in the ground case.



7. In response to the aforementioned argument of learned counsel for HCP petitioner, learned Prosecutor submitted that bail has been granted in similar cases and therefore there is every possibility of detenu coming out on bail and it is this that impelled the detaining authority to make the impugned preventive detention order.

8. We carefully considered the rival submissions.

9. We also find that the aforementioned point raised by learned counsel for HCP petitioner has been articulated in ground 'a' in the support affidavit and the same has been met by the respondents in the counter affidavit sworn to by the detaining authority. We refrain from extracting and reproducing the pleadings but suffice to say that the burden of the song *qua* the detaining authority in the counter affidavit is that the regular penal law would not have the desired effect of effectively preventing the detenu from indulging in alleged activities i.e., activities alleged *qua* two adverse cases and one ground case.

10. The law is well settled and we remind ourselves of the celebrated judgment of Hon'ble Supreme Court in ***Ram Manohar Lohia***



vs. **State of Bihar and others** reported in **AIR 1966 SC 740**, wherein,

Hon'ble Supreme Court propounded three concentrated circles theory and also explained the three concentric circles theory by way of an illustrative articulation. We deem it appropriate to extract and reproduce relevant paragraphs in **Ram Manohar Lohia** which are 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



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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.'

The above is instructive and we respectfully follow the same. To be noted, Ram Manohar Lohia has stood the test of time over half a century and it continues to be a good law as it has been reiterated even very



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recently by Hon'ble Supreme Court in **Mallada's case** being **Mallada K.Sri Ram Vs. The State of Telangana & others.** reported in **2022 Live Law (SC) 358.**

11. It is necessary for a case to move from the first larger concentric circle representing law and order to second smaller concentric circle of public order for a preventive detention order to be clamped. In the case on hand, without recording subjective satisfaction as to imminent possibility of detenu being enlarged on bail under the regular law and order mechanism i.e., regular penal law mechanism, the detaining authority has straightaway come to the conclusion that recourse to regular penal law would not be good enough to contain the situation. This coupled with the fact that there is no articulation as to how the factual matrix moves from the first larger concentric circle of law and order to the second smaller circle of public order makes it clear that there is non application of mind and the impugned preventive detention order has been made in a mechanical manner. In this regard, we remind ourselves that preventive detention is not a punishment and HCP is a high prerogative right as articulated by this Court i.e., Madras High Court in **A.K.Gopalan vs. The District Magistrate and another**



reported in **1949 Cri.LJ 843**, wherein Hon'ble Mr.Justice SUBBA RAO,

used the expression 'high prerogative right'. Thereafter, as the law of preventive jurisprudence evolved, it became clear that the first question which a habeas court would ask itself is whether the normal law and order mechanism is good enough to handle the situation or is it imperative that the State should resort to preventive detention for containing the situation. Answer to this question which can be clearly binary would also answer the issue as to whether a preventive detention order deserves to be interfered with or sustained.

12. In the case on hand, as already alluded to supra, the detaining authority after repeatedly noticing and mentioning the factual position that the detenu has not moved any bail petition *qua* the ground case in the circumstances alluded to supra, i.e., when he remained incarcerated in having been arrested in the second adverse case, it is clear that the impugned preventive detention order is vitiated on the point that subjective satisfaction has not been recorded and it is being clamped without application of mind *qua* imminent possibility of detenu being enlarged on bail. We also deem it appropriate to add that there is nothing in the grounds of impugned preventive detention order to demonstrate



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that the normal law and order mechanism or normal law and order penal law is not good enough to contain the situation. This means that the impugned preventive detention order which is vitiated deserves to be dislodged in this habeas legal drill on hand.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 19.04.2023 bearing reference No.P.D.O. 10/2023 made by the detaining authority is set aside and the detenu Thiru.Durai @ Duraisamy, aged about 27 years, son of Thiru.Nagarathinam, 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.)
12.10.2023

Index : Yes
Neutral Citation : Yes
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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600009.



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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Office of the District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.

3. The Superintendent of Prison,
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5. The Inspector of Police,
Ganesh Nagar Police Station,
Trichy District.

6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.

ORDER MADE IN
HCP(MD)No.1119 of 2023
DATED : 12.10.2023