



H.C.P(MD)No.1138 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

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Rahmath Beevi

.. Petitioner

VS

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

2.The District Collector and District Magistrate,
Tenkasi District, Tenkasi.

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

.. Respondents

Prayer:- 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 passed in M.H.S.Confdl No. 59/2023 dated 08.08.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu ie., the petitioner's husband namely Rahumathullah,



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aged about 44 years, S/o.Abdulrahuman, now detained at the Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty forthwith.

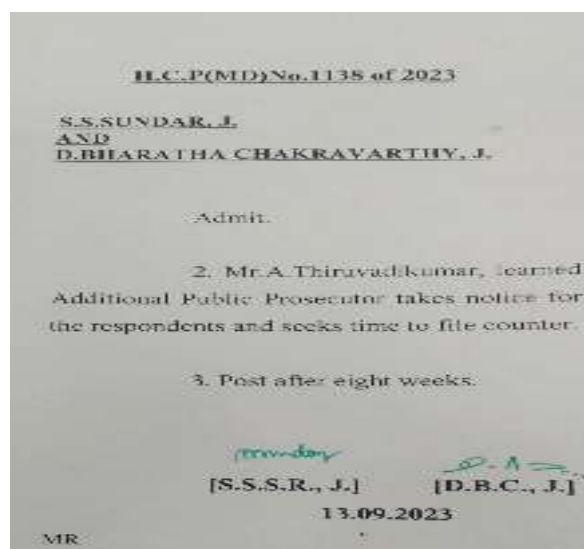
For Petitioner : Mr.A.Haja Mohideen

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] was listed in the Admission Board on 13.09.2023 and a Hon'ble Predecessor Coordinate Division Bench made the following order in the Admission Board and a scanned reproduction of the same is as follows:





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2.It has now become necessary to capture essential facts that are imperative for appreciating this final order.

3.Today, captioned matter is in the Final Hearing Board.

4.Mr.A.Haja Mohideen, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.Captioned HCP has been filed by the wife of the detenu assailing a 'preventive detention order dated 08.08.2023 bearing reference M.H.S.Confdl.No.59/2023' [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 'Kadayanallur 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.



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6. Impugned preventive detention order has been clamped on

one Thiru. Rahumathullah, aged 44 years (Son of Thiru. Abdulrahuman) branding him as a 'Sexual Offender' within the meaning of Section 2(ggg) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drugoffenders, 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].

7. The impugned preventive detention order is predicated on a solitary offence and that solitary offence is Crime No.264 of 2023 on the file of Kadayanallur Police Station (Tenkasi District) for alleged offences under Sections 9(m) and 10 of 'The Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of brevity].

8. This Court having captured essential facts imperative for appreciating this final order now plunges into habeas legal drill.



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9.In the support affidavit *qua* captioned HCP though multiple grounds have been raised, Mr.A.Haja Mohideen, learned counsel on record for HCP petitioner (to be noted, wife of the detenu is the HCP petitioner) predicated his argument on the point that the impugned preventive detention order does not pass muster as regards detenu acting in any manner prejudicial to the maintenance of public order. To put it differently, it is the pointed argument of learned counsel that the impugned preventive detention order which is predicated on a solitary alleged offence is one that can be dealt with by law and order mechanism and resort to preventive detention is unwarranted as there is nothing to demonstrate that the detenu has acted in any manner prejudicial to the maintenance of public order.

10.In support of his contention, learned counsel placed before us a case law. This is ***Charakonda Chinna Chenniah's*** case [***Charakonda Chinna Chennaiah Vs. State of Telangana and others*** reported in ***2021 SCC Online TS 261***] rendered by a Hon'ble Division Bench of the High Court of Telangana at Hyderabad. This ***Charakonda Chinna Chenniah's*** case has been rendered by a Hon'ble Division



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Bench of another High Court. In other words, it is not by a Coordinate Division Bench. In this view of the matter (at this stage but there will be discussion elsewhere infra in this order) without expressing any view one way or the other on **Charakonda Chinna Chenniah's** case, the argument of HCP petitioner will now be tested on the celebrated **Ram Manohar Lohia's** case the *locus classicus*. This celebrated judgment ie., **Ram Manohar Lohia's** case reported in **AIR 1966 SC 740 [Ram Manohar Lohia Vs. State of Bihar and another]** is one where Hon'ble Supreme Court propounded three concentric circles doctrine. To be noted, **Ram Manohar Lohia** principle continues to be a good law as the same has been reiterated and followed by Hon'ble Supreme Court as recently as 04.04.2022 in **Mallada's** case [**Mallada K.Sri Ram Vs. The State of Telangana & Ors. reported in 2022 LiveLaw (SC) 358**] which is also a case pertaining to preventive detention arising from State of Telangana.

11.While on **Ram Manohar Lohia's** case law, we deem it appropriate to extract and reproduce relevant paragraphs 54 and 55 thereat, 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 "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.'

12.Reverting to the case on hand, in response to the argument of learned counsel for HCP petitioner, learned Prosecutor drew our attention to paragraph 5 of the grounds of the impugned preventive detention order, which reads as follows:



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'5.On perusal of the records, I am satisfied that Thiru.Rahumathullah is committing sexual crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a 'Sexual Offender' as contemplated under Section 2(ggg) of the 'Tamil Nadu Act 14 of 1982. By committing sexual assault on a girl, he harassed her mentally and physically, he has created an alarm of sexual assault and a feeling of insecurity against sexual assault in the minds of women and girls of the area and thereby acted in a manner prejudicial to the maintenance of the public order.'

13.Adverting to the aforementioned paragraph 5, learned prosecutor submitted that the Detaining Authority has adverted to the aspect of acting in any manner prejudicial to the maintenance of public order.

14.This Court carefully considered the rival submissions.



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15.The expression '*acting in any manner prejudicial to the maintenance of public order*' has been defined in Act 14 of 1982 vide Section 2(a). As the impugned preventive detention order has been clamped by branding the detenu as a 'Sexual Offender', Section 2(a) (iv-B) of Act 14 of 1982 is relevant and the same read as follows:

'2.Definitions.-

(a) 'acting in any manner prejudicial to the maintenance of public order'' means -

(i) xxxxx

(i-A) xxxxx

(ii) xxxxx

(ii-A) xxxxx

(iii) xxxxx

(iv) xxxxx

(iv-A) xxxxx

[(iv-B) in the case of Sexual – offender, when he is engaged, or is making preparations for engaging, in any of his activities as a sexual-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;]'



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16.We also deem it appropriate to extract and reproduce the definition of 'Sexual Offender' in Section 2(ggg) of Act 14 of 1982 which reads as follows:

'[(ggg) "sexual-offender" means a person, who commits or attempts to commit or abets the commission of any offence punishable under sections 354, 376, 376-A, 376-B, 376-C, 376-D or 377 of the Indian Penal Code (Central Act XLV of 1860) or the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Tamil Nadu Act 44 of 1998) or the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012)]'

17.A careful perusal of the aforementioned 2(a) (iv-B) and 2(ggg) of Act 14 of 1982 makes it clear that in the case of a 'Sexual Offender', the requirement to satisfy the expression '*acting in any manner prejudicial to maintenance of public order*' is that the detenu should either be engaged or making preparations for engaging in any activities which are likely to affect adversely the maintenance of public order.



18.In the case on hand, paragraph 5 of the grounds of the impugned preventive detention order to which our attention was drawn is not supported by any material. To be noted, the distinction between '*law and order*' and '*public order*' has been clearly brought out in ***Ram Manohar Lohia's*** case by adopting an illustrative approach. Hon'ble Supreme Court has put in place three concentric circles doctrine by adopting an illustrative approach and the relevant paragraphs have already been extracted and reproduced supra.

19.In the case on hand, as aforementioned paragraph 5 of the grounds of impugned preventive detention is in the abstract and it is not supported by any material, we have no hesitation in sustaining the argument of learned counsel for HCP petitioner. In this regard, before proceeding further we make it clear (as a matter of illustration) that by '*supporting material*' we refer to some statements or some complaints from the citizenry in the local area fearing similar action by the detenu or some special report from the Sponsoring Authority saying that the detenu is making preparations for engaging in similar activity. We hasten to make it clear this is only an illustration to add clarity and



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specificity to the view that we are taking and this shall not be construed as any exhaustive adumbration of material to support averments akin to paragraph 5 of the grounds of the impugned preventive detention order.

20.The sum totality of the narrative, discussion and dispositive reasoning set out thus far makes it clear that the case on hand does not pass muster as regards detenu acting in any manner prejudicial to maintenance of public order. This Court having said that, now deems it appropriate to make a reference to the ground case. This Court is informed that the ground case is now Special C.C.No.3149 of 2023 [CNR No.TNTL2500131532023] on the file of Special Court for POCSO Court, Tirunelveli. Learned Prosecutor submits that charge-sheet has been filed on 17.08.2023 in the ground case. According to learned Prosecutor, filing of the final report ie., charge-sheet on 17.08.2023 is well within the prescribed time. If that be the case, detenu has to seek regular bail. If the detenu chooses to seek regular bail in the trial Court, we make it clear that the trial Court shall deal with the bail application on its own merits and in accordance with law untrammelled by what has been set out in this order which has been made for the



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purpose of testing the impugned preventive detention order in a habeas legal drill. This also means that the regular and normal law and order mechanism would now be the mechanism which would be taking care of the alleged offence.

21. In the earlier part of this order referring to **Charakonda Chinna Chenniah's** case, we have said that we are not expressing any view at this stage. Now, we find that **Charakonda Chinna Chenniah's** case is comparable with the case on hand, that it is also a case of alleged offences under POCSO Act and the preventive detention order has been clamped under 'the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (Act 1 of 1986) [hereinafter 'Telangana Preventive Detention Act' for the sake of brevity].



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22. On a broad view of the matter, there is no dispute or contestation that Telangana Preventive Detention Act and Act 14 of 1982 are Acts where the scheme of the statute are akin to each other. Therefore, we deem it appropriate to extract and reproduce paragraph 20 of **Charakonda Chinna Chenniah's** case, which reads as follows:

'20. Grave as the offence may be, it relates to penetrative aggravated sexual assault on a minor girl. So, no inference of disturbance of public order can be drawn. This case can be tried under the normal criminal law and/or special legislation. And, if convicted, can certainly be punished by the Court of law. Thus, the case does not fall within the ambit of the words "public order". Instead, it falls within the scope of the words "law and order". Hence, there was no need for the detaining authority to pass the detention order.'

23. To add specificity and clarity to our order, we make it clear that this order shall not be construed to mean that preventive detention orders cannot be clamped on the basis of one solitary case. In this regard, in a similar alleged Sexual Offender case ie., **Susamma Baby's** case [**Susamma Baby Vs. The Principal Secretary to Government and others** reported vide Neutral Citation of Madras High



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Court being **2023/MHC/1752**] another Coordinate Hon'ble Division Bench has held that solitary case can constitute the entire substratum of the preventive detention order under Act 14 of 1982 when it comes to Sexual Offender.

24.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.08.2023 bearing reference MHS.Confdl No.59/2023 made by the second respondent is set aside and the detenu Thiru.Rahumathullah, aged 44 years, son of Thiru.Abdulrahuman, 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.]
16.11.2023

Index : Yes

Neutral Citation : Yes

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Post Script: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. 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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- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
 - 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
 - 4.The 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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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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