



HCP(MD)No.2112 of 2022

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.2111 of 2022

Kaliammal

.. Petitioner / mother of
the detenue

Vs.

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

2.The District Collector and District Magistrate
District Collector's office,
Tiruchirappalli District

3.The Superintendent of Prison,
Special Prison for Women,
Tiruchirappalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the detention order passed by the 2nd respondent in detention order made in Cr.M.P.No. 62/2022 dated 14.11.2022 under Section 2(f) of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the



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detenue namely, Babitha Rose, (Transgender) D/o.Kaliammal, aged about 27 years detained at Special Prison for women, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Vadivel

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenue viz., Babitha Rose aged about 27 years, D/o.Kaliammal. The detenue has been detained by the second respondent by his order in Cr.M.P.No.62/2022 dated 14.11.2022 holding her to be a "Goonda", as contemplated under Section 2(f) of Tamil 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.



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3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that the offence involved is one under Section 420 IPC and the detaining authority has come to the conclusion that the activities of the detainee are prejudicial to the maintenance of public order. However, the offence under Section 420 IPC could not be termed as an offence, which caused prejudice to the maintenance of public order and hence, on the sole ground, the detention order is liable to be interfered with.

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

5. While passing the detention order, the detaining authority had referred to an adverse case in crime No.141/2022 on the file of the Valanadu Police Station, in which the petitioner was implicated for having committed the offence under Sections 294(b), 420 and 506(i) IPC. By referring to the adverse cases as well as the ground case, which is also for an offence under Section 420 IPC among other offences, the authority, which had come to the conclusion that by committing these crimes in a residential area, the detainee



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has created feeling of insecurity in the minds of the people in that locality, in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order.

6. However, the issue as to whether the detenue's involvement in a criminal case for an offence under Section 420 IPC could be termed as an activity prejudicial to the maintenance to public order had come up for consideration before the Hon'ble Supreme Court in the case of ***Banka Sneha Sheela v. State of Telangana and Others [2021] 9 SCC 415*** as well as in ***Mallada K.Sri Ram v. State of Telangana and Others [2022] SCC Online SC 424***.

7. In ***Banka Sneha Sheela*** (supra), the Hon'ble Supreme Court had set out the distinction between a mere law and order disturbance and a public order disturbance and while quoting certain examples, had come to the conclusion that a mere contravention of law, such as indulging in cheating or criminal breach of trust, would affect the law and order and not the public order, which must affect the community or public at large. The relevant portion of the said judgment reads as under:



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“13. As is well-known, the expressions ‘law and order’, ‘public order’, and ‘security of state’ are different from one another. In [Ram Manohar Lohia v. State of Bihar](#) (1966) 1 SCR 709 the question before this Court arose under a Preventive Detention Order made 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. This Court set out the distinction between a mere law and order disturbance and a public order disturbance as follows:

“42. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of India and civil defence. The expression public safety and interest between them indicate the range of action for maintaining security peace and tranquillity of India whereas the expressions defence of India and civil defence connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of apprehension



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and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable—

(a) of being of hostile origin; or

(b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to—

(i) the defence of India and civil defence;

(ii) the security of the State;

(iii) the public safety or interest;

(iv) the maintenance of public order;

(v) India's relations with foreign states;

(vi) the maintenance of peaceful conditions in any part or area of India; or

(vii) the efficient conduct of military operations.

It will thus appear that security of the state, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of [Section 3\(15\)](#). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of “law and order” as against “public order” the District Magistrate went outside his powers.

51. 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



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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 disorders or only some of them? 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 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 imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the



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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.” [page 745-746]

14. There can be no doubt that for ‘public order’ to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects ‘law and order’ but before it can be said to affect ‘public order’, it must affect the community or the public at large.

By referring to Banka Sneha Sheela, the Hon'ble Supreme Court had reiterated a similar ratio in its subsequent decision in ***Mallada K. Sri Ram v. State of Telangana and others*** (supra) also.

8. In the light of the decisions of the Hon'ble Supreme Court, quoting the adverse cases as well as ground case, in which the main offence was for one under Section 420 IPC, the subjective satisfaction of the detaining authority that the activities of the detainee are prejudicial to the maintenance of public order cannot be sustained.



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9. 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.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.156/2022 dated 19.11.2022 passed by the second respondent is set aside. The detenu, viz., Hariharan S/o.Sakthivel, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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

Internet : Yes
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To

1. The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The Joint Secretary to Government
Public Law and Order
Fort St. George, Chennai 09.
3. The District Collector and District Magistrate
District Collector's office,
Tiruchirappalli District
4. The Superintendent of Prison,
Special Prison for Women,
Tiruchirappalli.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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

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