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HCP.No.1050 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1050 of 2024

Dhanalakshmi

... Petitioner

Vs.

- 1 State of Tamil Nadu rep. By its
The Secretary to the Government,
Home, Prohibition And Excise Department,
Secretariat,
Chennai – 600 009.
- 2 The Commissioner of police,
Greater Chennai,
Chennai.
- 3 The Inspector of Police,
Central Crime Branch-I, Chennai.
- 4 The Superintendent,
Central Prison, Puzhal, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to petitioner's husband



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detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 12.03.2024 on the file of the second respondent herein made in proceedings No.179/BCDFGISSSV/2024 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's husband namely Dilip Kumar, aged 41 years, son of Sudharsan before this High court and set him at liberty, now petitioner's husband detained at Central prison, Puzhal, Chennai-600 066 and pass such further or other orders as this Court.

For Petitioner : Mr.V.Parthiban for Mr.C.C.Chellappan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The order of detention passed by the 2nd respondent in proceedings No.179/BCDFGISSSV/2024 dated 12.03.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The ground on which, the impugned order of detention has been issued is that, on 17.07.2023 Thiru Balaji, male, age 42 S/o Durai residing at No.96, Srinivasan Perumal Koil Street, Periyathoppu, Keezhandai Street, Manali, Chennai - 68 lodged a complaint to the Commissioner of Police, Greater Chennai Police



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stating that Tvl.Sasidharan, Dinesh Kumar, Prem Kirpaul, Sudharsanam, Dilip Kumar, Arun Kumar, Panneer Rajaiah, Ranjith Prabhu running Trading companies in the names of Annai Infosoft Solutions, Annai Capital Solutions, Thamizh Annai Holidays Ltd., have cheated him and others to the tune of Rs.88,10,000/- under the pretext of offering huge returns for their investments and requested to take action against them.

3.On receipt of the complaint from various depositors, criminal case was registered against the detenue.

4.The learned Additional Public Prosecutor appearing for the respondents would submit that a report stating that 800 depositors are allegedly cheated by the detenues and therefore, the accused are detained under the preventive detention laws.

5.An apprehension is raised on behalf of the respondents that there is likelihood of fleeing away from the Country and in such circumstances, it may not be possible for the respondents to recover the money from the offenders and return the same to the victims. Therefore, preventive detention in the present case is



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essential.

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6.The report filed by the respondents would reveal that accused persons have collected deposits in Annai Capital Solution and Annai Academy Pvt., from the public through their team leaders assuring to give 18% interest per month and the deposits will double in 12 months, both in per month as well as through bank transactions, issued receipts and entered Memorandum of understanding. Sofar, they have collected deposits from about 800 victims to the tune of Rs.30 crores and out of these, 300 depositors have not received their money to the tune of Rs.14 crores. Using the deposits, they have paid interest for some of the depositors, purchased properties in many places and shared the money among themselves. The investigation is in progress. Under these circumstances, the respondents invoked Act 14 of 1982.

7.The ground case must have nexes to the object sought to be achieved through preventive detention. Preventive detention is not penal in nature but is only a regulatory measure to prevent commission of crimes. The balance between right to personnel liberty and public order must be achieved. There should not be an automatic preventive detention for all crimes. Individual determination,



background of earlier crimes committed and severity of crimes committed must be assessed as part of detention order. Admittedly, the detenue is involved in alleged white collar offence. In similar circumstances, the Hon'ble Supreme Court has elaborately considered the principles in the case of ***Mallada K Sri Ram Versus The State of Telangana & Ors*** reported in [2022 LiveLaw SC 38]. The Apex Court, while considering the principles, relied on the judgement of the Constitution bench in the case of ***Ram Manohar Lohia v. State of Bihar*** reported in [AIR 1966 SC 740].

“12. The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in Ram Manohar Lohia v. State of Bihar; AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

“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 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



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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



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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 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.”

8. In para 13, the Apex Court considered the ratio laid down in the case of ***Banka Sneha Sheela v. State of Telangana***, reported in [(2021) 9 SCC 415] and held that,



13. In *Banka Sneha Sheela v. State of Telangana*, (2021) 9 SCC 415 a two-judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held:

“9. ...learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a “law and order” problem if at all would arise on the facts of these cases and not a “public order” problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail



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applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a “white collar offender” as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. “Public order” is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of “law and order” in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or



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alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is makebelieve and totally absent in the facts of the present case. 32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground....”



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9.A question arises, whether by keeping these kind of white collar offender under preventive detention law would resolve the issues or can be considered as a means to settle money to the deceased.

10.Considering the facts that, some individuals depositors have deposited their hard earned money and the detenues have allegedly cheated them, it is the duty obligated on the State to initiate all appropriate actions to recover the money and settle the same to the victims as earliest as possible. The law relating to the offences would be sufficient to initiate all appropriate actions. While so, invocation of preventive detention law may not be required, since the Detaining Authority has not considered the fact that there is no likelihood of breach of public order in the present case.

11.Therefore, the respondents have to proceed with the case already registered, initiate all appropriate steps to realize the money and settle the same to the victims.

12.The learned Additional Public Prosecutor raised a concern that there is a



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likelihood of fleeing away from the Country. In this regard, it is brought to the notice of the Court that the passport of the detenues were already been seized by the authorities. The respondents are at liberty to file an application to cancel the bail or in alternate, file an application for imposing stringent conditions, so as to ensure that the accused are subjected to trial, as expeditiously as possible.

13.However, we do not find any acceptable reasons for the purpose of sustaining the impugned order.

14. Hence, for the aforesaid reason, the detention order passed by the second respondent in proceedings No.179/BCDFGISSSV/2024 dated 12.03.2024 is quashed and the Habeas Corpus Petition is **allowed**. The detainee viz., Dilip Kumar, aged 41 years, son of Sudharsan, now confined in Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

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Index : Yes/No
Speaking Order : Yes/No



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Neutral Citation : Yes/No

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AND
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- 5 The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
- 6 The Public Prosecutor,
Madras High Court

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