



WEB COPY

HCP.No.1115 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1115 of 2024

Kavitha

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Avadi, City Police,
Avadi, Chennai - 600 054.
3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
E-1, Ponneri Police Station,
Chennai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records in No.41/BCDFGISSSV/2024 dated 03.05.2024 on the file of second respondent herein and set aside the same as illegal and produce the detainee Viji @ Vijai, Son of Babu, aged about 35 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Mere apprehension of a breach of law or order is not sufficient to meet the standard of adversely affecting the "maintenance of public order".

2. The apprehension of disturbance to public order owing to a crime is to be established for the purpose of depriving a person for his personal liberty. No doubt, the nature of the allegations against the detainee are grave in nature. However, the personal liberty of an accused cannot be



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sacrificed on the alter of preventive detention merely because a person is implicated in the criminal proceedings. The powers of preventive detention are exceptional and even draconian. The Preventive Detention law has its origin to colonial era. They have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into draconian and arbitrary exercise of statutory Authority. Therefore, the detaining Authority must be doubly conscious while exercising the powers enshrined under Act 14 of 1982. Personal liberty is a fundamental right enshrined under the Constitution and to be taken away only if the Authority satisfied to his fullest conscious but not otherwise.

3. In a larger democracy like that of ours, personal liberty is a valuable right. Therefore, mere apprehension if taken as a ground for detaining a person, the law expects that such exercise must be done by strictly following the procedures as contemplated and subjective satisfaction are to be established. Routine application of mind would be insufficient and Courts are bound to look into the possibility of commission of future crime,



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which would be the subjective satisfaction to be ascertained by the detaining Authority.

4. In the present case, Mr.E.Raj Thilak, the learned Additional Public Prosecutor would brought to the notice of this Court that the detainee is frequently involved in criminal cases. He is a habitual offender and several cases are registered against him.

5. No doubt, such cases are to be pursued vigilantly by the investigating Authorities. The order of detention reveals that three cases are relied on for the purpose of detaining the detainee under Act 14 of 1982. Those three cases are registered by the same Police Station i.e., E-1, Ponneri Police Station in Crime Nos.394 of 2023, 766 of 2023, 111 of 2024. All these cases are recent cases.

6. Mere registration of a criminal case more in number would alone cannot be a ground to invoke the powers conferred to the competent Authority under Act 14 of 1982. Likelihood of grant of bail in those cases are also to be taken into consideration by the detaining Authority.

7. However, in the present case, such an effort has not been undertaken by the detaining Authority. More-so, the detainee was arrested on



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04.03.2024 and the impugned order of detention was issued on 03.05.2024.

The order of detention was passed after a lapse of about two months. Thus, the application of mind on the part of the detaining Authority is lacking in our opinion. More-so, there is an enormous delay of about two months in passing the order of detention, which is also vital. Thus, we are inclined to interfere.

8. Accordingly, the impugned order of detention passed by the second respondent in proceedings Memo No.41/BCDFGISSSV/2024 dated 03.05.2024 is quashed and the Habeas Corpus Petition stands **allowed**. The detenue viz., Viji @ Vijai, Son of Babu, aged about 35 years, who is confined at Central Prison, Puzhal, Chennai is directed be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

06.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

veda



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To

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1. The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public Law and Order,
Fort St.George,
Chennai - 600 009.
3. The Commissioner of Police,
Avadi, City Police,
Avadi, Chennai - 600 054.
4. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
5. The Inspector of Police,
E-1, Ponneri Police Station,
Chennai.
6. The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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