



WEB COPY



HCP.No.1141 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.1141 of 2024

Mini

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 66.

4.The Inspector of Police, Law and Order,
F-5, Choolaimedu Police Station,
Chennai.

... Respondents



HCP.No.1141 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 25.03.2024 in No.247/BCDFGISSSV/2024 against the petitioner's husband Thiru.Binu, male aged 57 years s/o. Pappachan who is confined at central prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before the court and set him at liberty

For Petitioner : Mr.S.Senthilvel

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.247/BCDFGISSSV/2024 dated 25.03.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The detenue was arrested on 11.03.2024 and the impuged detention order was issued on 25.03.2024. The detenue is under imprisonment for about 5 months.



HCP.No.1141 of 2024

3.The learned counsel for the petitioner would submit that the Government Order served on the detainee has not been translated, which resulted in causing prejudice to the detainee to submit representation in an effective manner.

4.The learned Additional Public Prosecutor would oppose by stating that, 24 criminal cases are pending against the detainee and he has bad antecedents.

5.Number of criminal cases pending alone cannot be a criteria for the purpose of invoking preventive detention law. The preventive detention law has different purpose and object, and to be invoked sparingly, if the Detaining Authority subjectively satisfied that there is a likelihood of causing breach of public order. The difference between the breach of public order and the law and order has been well distinguished by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Dr. Ram Manohar Lohia vs State Of Bihar And Others*** reported in [AIR 1966 SCC 740].

6.The Apex Court has given an example that when two drunkards quarrel and fight, there is disorder but not public disorder. They can be dealt with under



HCP.No.1141 of 2024

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. Such a scenario must be established by the Detaining Authority by furnishing reasons which must be candid and convincing for the purpose of invoking Act 14 of 1982. Mere disturbance to law and order would be insufficient to invoke preventive detention law. Further, the Hon'ble Supreme Court states that, 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. Therefore, each and every crimes cannot be brought within the ambit of public order by the Detaining Authority. The public order must be defined in a proper sense and the apprehension must be raised and supported with reasons and in the absence of any such valid reasons, the detention order cannot be sustained by the State.

7.No doubt in the present case, the detinue has involved in several criminal cases. Those criminal cases can be tried under penal law. If at all, bail has been granted, the State may file an application seeking cancellation of bail or to impose



HCP.No.1141 of 2024

stringent conditions on the accused persons enabling them to proceed with the trial without causing undue delay. Instead of taking regular course under the criminal law, the detaining authority cannot adopt their short circuit method, so as to detain a person based on mere apprehension that there is a likelihood of commission of crime. Such presumptive reasoning must be sound enough to form an opinion that there is a threat to the public order and mere suspicion or apprehension would be insufficient.

8. In view of the fact that the detainee is facing number of criminal cases, the respondents shall initiate all measures to conduct surveillance about the activities of the detainee, even in case, he is released on bail or otherwise, or file an application to cancel the bail or to impose stringent conditions or otherwise in the manner contemplated under law. However, we are not satisfied with the ground on which the preventive detention law has been imposed. The translated copy of Government Order has not been furnished.

9. Hence, for the aforesaid reason, the detention order passed by the second respondent in proceedings No.247/BCDFGISSSV/2024 dated 25.03.2024 is



HCP.No.1141 of 2024

quashed and the Habeas Corpus Petition is **allowed**. The detainee viz., Binu, male aged 57 years s/o. Pappachan who is confined at 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.]

20.08.2024

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

gd



HCP.No.1141 of 2024

WEB COPY

- To
- 1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai 600 009.
 - 2.The Commissioner of Police,
Greater Chennai.
 - 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 66.
 - 4.The Inspector of Police, Law and Order,
F-5, Choolaimedu Police Station,
Chennai.
 - 5.The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
 - 6.The Public Prosecutor,
Madras High Court



WEB COPY



HCP.No.1141 of 2024

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

gd

H.C.P.No.1141 of 2024

20.08.2024