



WEB COPY



HCP.No.1297 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

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

H.C.P.No.1297 of 2024

M.Akila

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its.
The Secretary to the Government,
Department of Home,
Prohibition and Excise,
Fort St.George, Chennai – 600 009.
- 2.The District Collector
and District Magistrate,
Ranipet District, Ranipet.
- 3.The Superintendent of Police,
Vellore District,
District Police Headquarters,
Sathuvachari, Vellore – 632 012.
- 4.The Inspector of Police,
All Women Police Station,
Ranipet, Ranipet District.



HCP.No.1297 of 2024

5. The Superintendent,
Central Prison, Vellore.

... Respondents

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records leading to the detention of the petitioner's Husband namely Thiru.Raghuraj Kumar, 54 years old S/o. Mesath, detained under Act 14/82 vide proceedings No.B3/D.O.No.39/2024 dated 30.05.2024 from the file of the 2nd respondent herein made in the proceedings and quash the same and consequently direct the Respondents herein to produce the body and person, Thiru.Raghuraj Kumar, aged 54 years old, S/o. Mesath of the said Detenue before this Court and thereafter, set him at Liberty from Central Prison Vellore.

For Petitioner : Mr.R.Krishnamoorthy

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

ORDER

(Order of the Court was made by *V.SIVAGNANAM, J.*)

The Writ of Habeas Corpus has been filed with the following prayer,

“This Court may be pleased to issue a Writ of Habeas Corpus or any other appropriate Writ, order or direction more specifically in the nature of a Writ of Habeas Corpus and call for the entire records leading to the detention of the petitioner's



HCP.No.1297 of 2024

WEB COPY

Husband namely Thiru.Raghuraj Kumar, 54 years old S/o. Mesath, detained under Act 14/82 vide proceedings No.B3/D.O.No.39/2024 dated 30.05.2024 from the file of the 2nd respondent herein made in the proceedings and quash the same and consequently direct the Respondents herein to produce the body and person, Thiru.Raghuraj Kumar, aged 54 years old, S/o. Mesath of the said Detenue before this Court and thereafter, set him at Liberty from Central Prison Vellore.”

2.The learned counsel for the petitioner submitted that the Detaining Authority/2nd respondent passed an impugned order without applying his mind, in pursuance of a complaint given by one Berlin and the case has been registered against the petitioner in Crime No.4 of 2024 for the offences under Section 506(2) of IPC along with Sections 7, 8, 9(1) and 10 of POCSO Act, for having sexually assaulting a minor girl namely Ashika, aged about 14 years in the month of December, 2022 and he continued that sexual assault for about 30 to 40 times. Therefore, a case is registered against the detenue.

3.Based upon the complaint, investigation has been conducted by the



HCP.No.1297 of 2024

Deputy Superintendent of Police, Ranipet District and the detenue has been arrested on 09.05.2024 and ordered to be remanded in judicial custody. He is now confined in Central Prison, Vellore.

4.Except this case, no adverse case is cited against the detenue. The allegations as stated in the complaint is that, the pastor of the church/detenue hugged the minor girl and sexually molested her. The alleged act of commission of offence for which the detenue has been kept under the detention is not prejudice to the public order. The Detaining Authority has not considered all the relevant circumstances and there is no material to show that the detenue is a habitual offender for prevention of further crime by him. The conduct of the detenue does not create the breach of public order or likelihood of breach of public order. Disturbance of public order is to be distinguished from acts directed against individuals, which do not disturb the society to the extent of causing a general disturbance of public tranquility. This question is not properly considered by the Detaining Authority. The grounds on which, the order of preventive detention raised are vague. Therefore, the impugned detention order is liable to be quashed and thus, pleaded to allow this Habeas Corpus Petition.



HCP.No.1297 of 2024

WEB COPY

5.To support his arguments, he relied on the judgment of the Hon'ble Supreme Court in the case of *Ameena Begum Vs. State of Telungana and ors* reported in [2023 9 SCC 587].

6.The learned Additional Public Prosecutor appearing for the State supported the order of the Detaining Authority and further contended that the victim girl is a regular attender of the Church, in which the detainee is serving as a pastor. As per the complaint, the detainee hugged the victim girl and pressed her breast and body, and kissed her frequently. He continued sexually molestating her for 30 to 40 times and also threatened her that the lives of her family members will be in danger, if she tells her parents about this incident. Hence, she became depressed and later disclosed the fact to her mother and subsequently, a complaint has been given and a case has been registered.

7.The detainee involved in sexual harassment with the minor girl, who is aged about 14 years and created a feeling of insecurity in the minds of the public who attended the Church in that area. 40,000 people have been attending the



HCP.No.1297 of 2024

church regularly. Because of this sexual harassment activities, the entire public who are attending the Church are disturbed and the act of the petitioner is a prejudice to the public order and therefore, the Detaining Authority has rightly passed the impugned order. There is no ground for interference and no merits in this case and thus, seeks dismissal of this petition.

8.We have considered the matter in the light of the submissions made on either side and perused the materials on records.

9.The facts of the case is that, on 17.03.2024 at morning 02.30 P.M., Berlin, age 33, W/o. Vinoth @ Raja residing at No.2B/34, Benjamin Layout, Muthukadai, Ranipet came to All Women Police Station, Ranipet and lodged a complaint before the Inspector of Police. In her complaint, Berlin has stated that, she is residing in the above said address, and that she is a member of Ranipet A.G. Church. She said that she and her daughter Ashika would be in the church during their rest time, and last December 2022, when Ashika was alone in the said church, Regurajkumar/detenuue, the pastor of the church, hugged Ashika so that her breasts were pressed against his body and kissed her frantically on the cheek, and



HCP.No.1297 of 2024

continued that until last November 2023. The said Regurajkumar has sexually molested her 30 to 40 times, and he was threatening her stating that the lives of everyone in her family will be dangerous, if she tells her parents about this incident. Due to that, the girl Ashika has become depressed and could not concentrate on her studies, she has complained. Therefore, she filed a complaint requesting necessary action against the Regurajkumar/detenué, who molested her daughter. The Inspector of Police, Ranipet All Women Police Station, registered a case under Sections 506(i) I.P.C., 7 r/w 8, 9(1) r/w 10 of Protection of Children from Sexual Offences Act 2012.

10.It is not disputed the petitioner was functioning as a pastor in the church in which the victim girl attended for prayer. The case is under investigation. The victim girl gave a statement disclosing about the sexual offence committed by the detenué who was a pastor in the church. It is also not disputed that many people in the locality were attending the church regularly. The circumstances make it necessary for ordering preventive detention. The Hon'ble Supreme Court in the case of *Ameena Begum Vs. State of Telungana and ors* reported in [2023 9 SCC 587] held that for an act to qualify as a disturbance to public order, the specific



activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. It is always a question of degree of the harm and its affect upon the community.

11.For better appreciation, the relevant portion of the judgment is reproduced hereinunder,

“36. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between “law and order” and “public order”.

37. We may refer to the decision of the Constitution Bench of this Court in [Ram Manohar Lohia vs. State of Bihar](#)¹⁶, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:

*“54. *** 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*



WEB COPY



HCP.No.1297 of 2024

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.

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." (underlining ours, for emphasis) (1966) 1 SCR 709

38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, CJ. in [Arun Ghosh vs. State of West Bengal](#)¹⁷, is this:

"Does it [read:the offending act] lead to disturbance of the current of life of the community so as to amount a



WEB COPY



HCP.No.1297 of 2024

disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

39. In that case, the petitioning detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order”.

40. In the process of quashing the impugned order, the Chief Justice while referring to the decision in [Ram Manohar Lohia](#) (supra) also ruled:

*“3. *** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”*



41. In *Kuso Sah vs. The State of Bihar*, Hon'ble Y.V. Chandrachud, J.(as the Chief Justice then was) speaking for the Bench held that:

*“4. *** The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ****

*6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***” (underlining ours, for emphasis)*

42. Turning our attention to [section 3\(1\)](#) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes ‘public order’. Even within the provisions of the Act, the term “public order” has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under [section 3\(1\)](#) of the Act can only be issued against a detenu to prevent him “from acting in any manner prejudicial to the maintenance of public order”. “Public order” is defined in the Explanation to [section 2\(a\)](#) of the Act as encompassing situations that



WEB COPY



HCP.No.1297 of 2024

cause “harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health”.

43. *Ram Manohar Lohia* (supra) is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.

44. *Rekha too* (supra) provides a useful guide. It is said in paragraph 30 that:

“30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”



HCP.No.1297 of 2024

WEB COPY

12. On perusal of the facts, it is seen that, the petitioner being a pastor in the church, in which many people were attending for prayer, had sexually harassed the victim girl who attended the church for prayer, creating panic, fear and insecurity in the minds of the public in that area and thereby, disturbed tranquillity of the society and the degree of disturbance and its affect upon the life of the community in a locality.

13. Therefore, the Detaining Authority subjectively satisfied that the activity of the petitioner is prejudice to the maintenance of the public order in committing the above said offence. Therefore, we find no illegality in the impugned order passed by the 2nd respondent and there is no grounds for interference. There are no merits in this case.

14. Accordingly, the Habeas Corpus Petition is dismissed.

[S.M.S., J.]

[V.S.G., J.]

12.08.2024

Index : Yes/No



HCP.No.1297 of 2024

Speaking Order : Yes/No

Neutral Citation : Yes/No

WEB COPY

To

- 1.The Secretary to the Government,
Department of Home,
Prohibition and Excise,
Fort St.George, Chennai – 600 009.



HCP.No.1297 of 2024

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

3.The Superintendent of Police,
Vellore District,
District Police Headquarters,
Sathuvachari, Vellore – 632 012.

4.The Inspector of Police,
All Women Police Station,
Ranipet, Ranipet District.

5.The Superintendent,
Central Prison, Vellore.

6.The Public Prosecutor,
Madras High Court.



WEB COPY



HCP.No.1297 of 2024

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

gd

H.C.P.No.1297 of 2024

12.08.2024