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HCP.No.1877 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.1877 of 2024

K.Balu

.... Petitioner

Vs.

1. The Principal Secretary,
Government of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Avadi Police Commissionerate,
Avadi Chennai 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai 600 066.

4.The Inspector of Police,
M-7, Manali New Town Police Station,
Chennai 600 103.

.... Respondents

PRAYER: Petition filed under Article 226 of Constitution of India to issue a Writ of Habeas Corpus to call for the records of the second respondent relating to the detention order No.29/BCDFGISSSV/2024 dated 02.04.2024 and quash the same and to direct the production of the detenu Mr.Jeeva @ Bhagavathi aged 22 years now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner

: Mr.T.P.Sekar



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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 second respondent in No.29/BCDFGISSSV/2024 dated 02.04.2024, is sought to be quashed in the present Habeas Corpus Petition.

2.The ground case relied on by the detaining authority has been registered by M-7 Manali New Town Police Station, in Crime No.69 of 2024 under Section 302 IPC. The complaint would reveal that the detenu while playing cricket along with his friends, picked up a petty quarrel and the caused injuries to the deceased, who in turn died subsequently. There is no adverse case relied on by the detaining authority. Single case registered under section 302 IPC would be insufficient to draw a factual inference that there is likelihood of causing breach of public order. Breach of public order and law and order has been well distinguished by the constitutional bench of the Supreme Court of India in the case ***Ram Manohar Lohia v. State of Bihar*** reported in [AIR 1966 SC 740]. The relevant portion is extracted hereunder:

“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 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



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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.”

3.In the present case, the detenu has involved in an offence, which is allegedly committed when he was playing cricket along with his friends and out of a petty quarrel. If at all bail is granted, the respondents shall move an application for cancellation of bail or to impose stringent conditions on the accused so as to ensure that the trial is being conducted in an expeditious manner. However, the detaining authority is not justified in invoking act 14 of 1982.

4.Accordingly, the impugned order of detention in No.29/BCDFGISSSV/2024 dated 02.04.2024, is quashed and the Habeas Corpus Petition stands **allowed**. The detenu, namely, Mr.Jeeva @ Bhagavathi, S/o.Balu, aged 22 years, who is confined at Central Prison, Puzhal, Chennai, is directed to be



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set at liberty forthwith unless he is otherwise required in connection with any other case. The observations, if any made, relating to the allegations in the ground case is confined only for the purpose of dealing with the preventive detention order and may not have any impact in respect of the trial to be conducted by the competent court.

[S.M.S., J.]

[V.S.G., J.]

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

To

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5.The Public Prosecutor,
High Court, Madras.

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

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