



HCP.No.1707 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

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

H.C.P.No.1707 of 2024

Mahalakshmi

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Police,
O/o.Commissioner of Police,
Chennai City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai District.
- 4.The Inspector of Police,
R-11, Ramapuram Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order in BCDFGISVV No.629/2024 dated 04.06.2024 on the file of the Respondent No.2 and quash the same and direct the respondents to produce the



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body and person of petitioner's Son one named Mr.Dinesh S/o.Suresh aged about 24 years now confined at Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizhselvakumar
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 BCDFGISSSV No.629/2024, dated 04.06.2024, is sought to be quashed in the present Habeas Corpus Petition.

2.The impugned detention order has been issued based on one relied on case registered by the T-4, Maduravoyal Police Station, in Crime No.515 of 2023, under Sections 341, 294 (b), 323, 384, 560 (ii) IPC @ 341, 294 (b), 323, 384, 506 (ii), 332 IPC. The ground case was registered in Crime No.269 of 2024 by R-11, Ramapuram Police Station, under Sections 276, 294 (b), 353, 328, 506 (i) IPC & 77 of the Juvenile Justice (Care and Protection of Children) Act 2015. The detaining authority in the ground case formed an opinion that the detenu has been selling intense pain killing tablets Tapentadol – Aspadol under the guise of narcotic



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and ecstasy tablets to the public and the school students at higher rates. He used to sell the tablets stating that the said tablets are mixed with NS Water liquid after getting the same from the medical shop and if injected into their nerve it will give more and long term intoxication.

3.The learned Additional Public Prosecutor would submit that the said pain killing drugs are falling under the list of psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985. Under Section 65 A of Narcotic Drugs and Psychotropic Substances Rules, sale, purchase, consumption or use of psychotropic substances are prohibited. Therefore, the police have taken initiative to alter the sections in the FIR since the FIR was originally registered only under IPC offences.

4.It is left open to the investigating authority to alter the provisions suitably or to prosecute the persons in accordance with the law of the land. The Habeas Corpus Petition on hand is only about the impugned detention order passed by invoking Act 14 of 1982. Careful perusal of one relied on case and the ground case, the offence against the detenu is that he sold certain pain killing tablets to the



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school students at higher rates by falsely stating that if it is injected into their nerve, it will give more and long term intoxication. Except one adverse case, there is no other case pending against the detenu. The ground case indicates that the pain killing tablets Tapentadol – Aspadol were sold under the guise of narcotic and ecstasy tablets. Therefore, the investigating officer is at liberty to proceed against the detenu under the law of the land.

5.As far as the preventive detention order is concerned, we do not find any clinching materials available on record to arrive a conclusion that there is likelihood of causing breach of public order. In the absence of materials available on record, detention order cannot be passed in a routine manner by the detaining authority. In most of the cases, the detention orders are passed with an idea to convict the offenders, which cannot be encouraged by the Courts. The police authorities have to prosecute the offenders under the law of the land and by following the due procedures. They cannot adopt a shortcut procedure by detaining a person by invoking Act 14 of 1982. Such practices at no circumstances be approved by the High Courts. Personal liberty being a fundamental right, no person can be convicted without following the due procedures. The very object



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and purpose of preventive detention law is to prevent crime. Only on certain exceptional circumstances where the detaining authority arrived a conclusion that there is a likelihood of breach of public order and the term public order has been well defined by the Supreme Court in number of judgments and more specifically, in the case of **Ram Manohar Lohia v. State of Bihar** reported in [AIR 1966 SC 740] and 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



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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 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.”

6. In view of the facts and circumstances, we do not find any reason to



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sustain the impugned detention order. Consequently, the impugned order of detention in BCDFGISSSV No.629/2024, dated 04.06.2024, is quashed and the Habeas Corpus Petition stands **allowed**. The detainee, namely, Mr.Dinesh, S/o.Suresh, aged about 24 years, now confined at Central Prison, Puzhal, is directed to be set at liberty forthwith unless he is otherwise 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
Neutral Citation : Yes/No

To

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- 4.The Inspector of Police,
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5. The Public Prosecutor,
High Court, Madras.

S.M.SUBRAMANIAM, J.
AND



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V.SIVAGNANAM, J.

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