



HCP.No.2201 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS. JUSTICE N.MALA

H.C.P.No.2201 of 2024

Vasanthi

... Petitioner/Mother of
the Detenue

Vs.

1. State of Tamil Nadu,
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City,
Coimbatore.
3. The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
4. The Inspector of Police,
E-1, Singanallur Police Station,
Coimbatore District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order vide Memo C.No.38/G/IS/2024 dated 29.04.2024 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely M.Sureshkumar @ Sura, son of Maniyan, aged 29 years, (who is presently under going detention in the Central Prison, Coimbatore), before this Court and set him at liberty.

For Petitioner	: Mr.N.Arun Kumar
For Respondents	: Mr. E. Raj Thilak Additional Public Prosecutor

ORDER

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

The preventive detention order passed by the second respondent dated 29.04.2024 is sought to be quashed in the present habeas corpus petition.

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Based on two adverse cases and the ground case, the impugned detention order has been issued.

4. Both the adverse cases are registered by Coimbatore City, E-1



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Singanallur Police Station in Crime Nos.32/2024 and 145/2024 under Sections 379 & 392 of IPC. The ground case was registered in Crime No.155/2024 under Section 392 r/w Sections 397 and 506 (ii) of IPC.

5. Except two adverse cases and one ground case, there is no other case pending against the detenu, as per the learned Additional Public Prosecutor. The detenu was arrested on 29.03.2024 and the impugned detention order has been passed after a lapse of about one month in proceedings dated 29.04.2024. Thus, there was a delay in passing the detention order. More-so, the respondents could not able to establish that there is likelihood of causing breach of public order with reference to the relied on cases.

6. Mere registration of criminal case would be insufficient to invoke the provisions of Act 14 of 1982. Beyond pending criminal cases, the detaining Authority has to establish that there is likelihood of causing breach of public order and the term public order has been now well defined by the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** reported in [AIR 1966 SC 740]:

“12. The distinction between a disturbance to law and



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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



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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



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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.”

7. Since the detenu has already been detained for more than six



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months and the relied on cases would be insufficient to invoke preventive detention law and can be dealt with by the Police Authorities under the law of the land, we do not find any reasons to continue the preventive detention against the detenu in the present case.

8. Accordingly, the detention order passed by the second respondent in proceedings C.No.38/G/IS/2024 dated 29.04.2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., M.Sureshkumar @ Sura, aged 29 years, S/o. Maniyan, confined at Central Prison, Coimbatore is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.] [N.M., J.]
23.09.2024

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

1. State of Tamil Nadu,
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City,
Coimbatore.
4. The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
5. The Inspector of Police,
E-1, Singanallur Police Station,
Coimbatore District.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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AND
N.MALA, J.

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