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HCP.No.2321 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM :

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

H.C.P.No.2321 of 2024

Jayamala

... Petitioner /mother of detenu

Vs

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. District Collector and District Magistrate of
Ranipet District, Ranipet – 1.
3. The Superintendent of Police,
Ranipet District, Ranipet.
4. The Superintendent of Prison,
Central Prison, Vellore.
5. The Inspector of Police,
Sholinghur Police Station,
Ranipet District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a



HCP.No.2321 of 2024

Writ of Habeas Corpus, call for the records in connection with the order of Detention passed by the second respondent dated 29.07.2024 in B3/D.O.No.60/2024 against the petitioner son Duraipandiyan, Male aged 23 years S/o.Babu, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set at liberty.

For Petitioner : Mr. D.Balaji

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

ORDER

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

The preventive detention order passed by the second respondent dated 29.07.2024 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. There is no adverse case relied on for the purpose of detaining the detenu under Act 14 of 1982. Based on the ground case, the order of detention has been passed.



4. Perusal of the ground case reveals that on enmity alleged crime has been committed. That apart, the ground case relied upon can be dealt by the Police Authorities under the law of the land. Even in case bail is granted, the Police Authorities are at liberty to file a petition to cancel the bail or to seek alternate relief to impose stringent conditions. Contrarily, invoking preventive detention law may not be required in such nature of cases. Preventive detention law being colonial is to be exercised separately and only on subjective satisfaction that there is likelihood of causing breach of public order.

5. In this context, it is useful to refer to the judgement of the Constitution bench 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 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



WEB COPY



HCP.No.2321 of 2024

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



WEB COPY



HCP.No.2321 of 2024

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 ratio laid down by the Constitution Bench and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

7. For the aforesaid reasons, the detention order passed by the second respondent in proceedings B3/D.O.No.60/2024 dated 29.07.2024 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Duraipandiyan,



HCP.No.2321 of 2024

Male, aged 23 years, S/o.Babu, who is confined at Central Prison, Vellore is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

03.10.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

mrp

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WEB COPY



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