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HCP.No.2284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS. JUSTICE N.MALA

H.C.P.No.2284 of 2024

Jayalakshmi

... Petitioner/Wife of the
detenue

Vs.

1. State of Tamil Nadu,
Represented by the Additional
Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Avadi City,
Chennai - 600 054.
3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai - 600 066.
4. The Inspector of Police,
M-4, Redhills Police Station,
Chennai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.140/BCDFGISSSV/2024 dated 27.08.2024 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Natarajan s/o. Kandasamy aged about 58 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.B.Kumar
Senior Counsel
for Mr. R. Murali

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 27.08.2024 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.



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3. The impugned detention order has been passed based on one adverse case and the ground case.

4. The ground case was registered by M-4 Redhills Police Station in Cr.No.767/2024 under Section 353(1), 196(1), 118(1) of Bharatiya Nyaya Sanhita 2023 r/w 67 of Information Technology Act, 2000.

5. Based on the post in a Facebook by the detenu about his brother's death, which occurred prior to one year is taken into account for the purpose of detaining the detenu under Act 14 of 1982.

6. Perusal of the ground case would be sufficient to form an opinion that the detaining Authority would not have arrived at a subjective satisfaction regarding the likelihood of causing breach of public order, which is required for invoking Act 14 of 1982.

7. Mr.B.Kumar, the learned Senior Counsel would further submit that the said Facebook post was immediately removed within few hours and



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the detenu had no intention to cause any breach of public order and the Facebook post was made out of certain concern regarding the death of his brother, which occurred one year prior to the Facebook post.

8. That being so, we find that the detention in the present case would be improper and not satisfy the requirements as contemplated under Act 14 of 1982.

9. Preventive detention being draconian and personal liberty being fundamental right, a striking balance is to be adopted by the Courts while dealing with habeas corpus petition filed challenging such preventive detention orders. Mere commission of an offence would not provide a cause for invoking preventive detention law. If such offences can be dealt with under the law of the land, then the Authorities are expected to proceed with the criminal case by following the procedures and only on exceptional circumstances, where the detaining Authority arrived a conclusion based on the materials available on record that there is likelihood of causing breach of public order, then alone Act is to be invoked. The Constitutional Courts have



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time and again reiterated that the Authorities are expected to be cautious while invoking preventive detention law, since it is colonial law, which is in force and after developing a vibrant democracy in our country, the personal liberty being a pivotal role and fundamental right, which is to be preserved at all circumstances and preventive detention law is to be invoked in exceptional cases, where it is just and necessary but not otherwise.

10. For the aforesaid reasons, the impugned order of detention on the file of the second respondent in proceedings No.140/BCDFGISSSV/2024 dated 27.08.2024 is quashed and the habeas corpus petition stands **allowed**. The detenu viz., Natarajan aged 58 years, S/o. Kandasamy confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.] [N.M., J.]
19.09.2024

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

To
1. State of Tamil Nadu,



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Represented by the Additional
Chief Secretary to Government,
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,
Office of the Commissioner of Police,
Avadi City,
Chennai - 600 054.
4. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai - 600 066.
5. The Inspector of Police,
M-4, Redhills Police Station,
Chennai.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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S.M.SUBRAMANIAM, J.
AND
N.MALA, J.

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