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H.C.P.No.2527 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2024

CORAM:

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

H.C.P.No.2527 of 2024

Neelima	...	Accused /
W/o.V.R.Krishnakumar @ Varaaki		Wife of Detenu

versus

- 1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City Police,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal-II,
Chennai - 600 066.
- 4.The Inspector of Police,
E1 Mylapore Police Station,
Chennai.
(Crime No.289 of 2024)

...

Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order 989/BCDFGISSSV/2024 dated 23.09.2024 passed by the second respondent and set aside the same and direct the respondents to produce the body of the detenu Krishnakumar @ Varaaki, S/o.Radhakrishnan, aged about 50 years, now detained in Central Prison – II, Puzhal, Chennai, before this Court.

For Petitioner : Mr.P.Rajkumar Pandian
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by ***S.M.SUBRAMANIAM, J.***]

The Habeas Corpus Petition has been instituted challenging the detention order dated 23.09.2024 passed by the second respondent / Commissioner of Police.

2. Mr.E.Raj Thilak, learned Additional Public Prosecutor for the respondents on instructions would submit that the Government, after examination of the impugned detention order, decided not to extend the same. In this context, the learned Additional Public Prosecutor furnished a copy of the Government Letter No.21659/Home, Prohibition and Excise



(XIII) Department, Fort St.George, Chennai-9/2024 dated 04.10.2024. The

letter states that the Government has not approved the detention order dated 04.10.2024.

3. The consideration and the deliberation shown by the Government with reference to the detention order stand appreciated. It is needless to state that the fundamental rights under the Constitution are to be protected by the State and the preventive detention law is to be invoked sparingly and in exceptional cases, where there is likelihood of causing breach of public order by the individuals. Mere registration of a criminal case would be insufficient to invoke Act 14 of 1982. In the present case, the Government has rightly taken the spirit of the provisions of Act 14 of 1982 and decided not to confirm the detention order passed by the second respondent.

4. While appreciating the stand of the Government, we requested the Government to issue suitable directions so as to ensure that Act 14 of 1982 is invoked sparingly and in most deserving cases, where there are materials available on record that there is likelihood of causing breach of



public order. The breach of public order has been well defined by the

Hon'ble Supreme Court in the case of **Ram Manohar Lohia Vs. State of Bihar and Another**, reported in **1965 SCC OnLine SC 9** as under:-

"54. 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 disorder or only some ? 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



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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.

55. 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.”

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5. In view of the Government Letter No.21659/Home, Prohibition and Excise (XIII) Department, Fort St.George, Chennai-9/2024, dated 04.10.2024 not confirming the impugned detention order, no further adjudication is required. Hence, this Habeas Corpus Petition stands disposed of.

[S.M.S.J.] [V.S.G.J.,]
04.10.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Copy to:

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- 5.The Deputy Registrar,
Current Section,
High Court of Madras,
Chennai - 600 104.
- 6.The Public Prosecutor,
High Court of Madras,
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