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H.C.P.No.2586 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

H.C.P.No.2586 of 2024

Chithra

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal.

4.The Inspector of Police,
T-12 Poonamallee Police Station,
Chennai.

... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's husband namely Kanagalingam @ Senthil, aged about 38 years, presently lodged in



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Central Prison at Puzhal and has been detained under Act 14/82 as a 'GOONDA' vide detention order dated 25.09.2024 on the file of the 2nd respondent herein, made in No.166/BCDFGISSSV/2024, quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal.

For Petitioner : Mr.B.Ramesh Babu

For Respondents : Mr.P.S.Raman,
Advocate General
assisted by Mr.R.Muniyapparaj
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 No.166/BCDFGISSSV/2024 dated 25.09.2024, is sought to be quashed in the present Habeas Corpus Petition.

2. The impugned detention order has been issued relying on 6 adverse cases and the ground case. All the adverse cases are registered



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under the Provisions of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The ground case was also registered under the very same Act.

3. The Act 14 of 1982 was invoked on the ground that the criminal case was registered under Section 123 of Bharatiya Nyaya Sanhita, 2023. Section 123 of Bharatiya Nyaya Sanhita deals about causing hurt by means of poison etc., with an intent to commit an offence.

4. In a broader perspective, it requires careful analysis in view of the fact that there is no direct definition under Act 14 of 1982 with reference to the offences committed under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. No doubt, Section 123 of Bharatiya Nyaya Sanhita may be invoked for the purpose of applying preventive detention law in certain nature of offences for which the Detaining Authority has to subjectively satisfy that there is a likelihood of causing breach of public order.



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5. Pertinently, the first adverse case was registered in the year 2017; 2nd case in the year 2020; 3rd case in the year 2021; and 4th case in the year 2023. All those cases have no proximity with the ground case. In 2024, 2 adverse cases are registered.

6. The learned counsel for the petitioner would submit that the representation given under the Act 14 of 1982 was not considered within the time limit and there is a delay of 1 day in considering the representation, which is also a ground to vitiate the detention order.

7. In the light of the above discussion and findings, we deem it appropriate that the cases registered against the detenu may be dealt with under the regular penal law by the Police Authorities.

8. Accordingly, the detention order passed by the second respondent, in No.166/BCDFGISSSV/2024 dated 25.09.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kanagalingam @ Senthil, S/o.Periya Nadar, aged 38 years, (who is



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presently under going detention in the 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.)

(M.J.R, J.)

09.12.2024

Index: Yes

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