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H.C.P.No.2913 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.2913 of 2024

A.Revathy

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai Police Commissionerate,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
P-3, Vyasarpadi Police Station,
Vyasarpadi, Chennai – 600 039.

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for the



H.C.P.No.2913 of 2024

records of the Commissioner of Police, Greater Chennai Police Commissionerate, Vepery, Chennai, the 2nd respondent herein in connection with the Detention order vide 1026/BCDFGISSSV/2024, dated 08.10.2024 and quash the same and further direct the respondents to produce the detainee Thiru. Kannan @ Kulla Kanna, son of Arokiyadoss, male aged 27 years, who is detained in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.V.Ramanareddy

For Respondents : 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 2nd respondent in Memo No.1026/BCDFGISSSV/2024, dated 08.10.2024 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. The detention order was passed based on two adverse cases and



H.C.P.No.2913 of 2024

ground case. The first adverse case, registered in Crime No.147 of 2021 is currently under investigation. The second adverse case was registered under Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. The ground case was registered in Crime No.403 of 2024 under Sections 126(2), 296(b), 109 and 351(3) of the Bharatiya Nyaya Sanhita, 2023.

4. However, these adverse cases are capable of being dealt with under regular penal law. The nature of criminal case registered and the ground case would be insufficient to form an opinion that there is likelihood of causing a breach of public order, as held by the Apex Court in the case of ***Ram Manohar Lohia vs. State of Bihar and Another***¹, reads as follows;

“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

1. 1965 SCC Online SC 9



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H.C.P.No.2913 of 2024

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



WEB COPY



H.C.P.No.2913 of 2024

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.”

5. We are of the considered opinion that preventive detention orders should be invoked with extreme caution and sparingly. Mere presumption of causing public disorder is insufficient. There must be concrete and reliable



H.C.P.No.2913 of 2024

materials available on record to ensure that a person is to be detained urgently by invoking Act 14 of 1982.

6. Further, mere registration of a criminal case is insufficient to invoke Act 14 of 1982. The subjective satisfaction of the detaining authority must have a clear nexus, link and proximity relating to the adverse cases relied on. Since the cases registered against the detenu can be dealt with under the law of land, we are inclined to interfere.

7. Accordingly, the detention order passed by the 2nd respondent Memo No.1026/BCDFGISSSV/2024, dated 08.10.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz. Kannan @ Kulla Kanna, S/o.Arokiyadoss, aged 27 years, currently confined at Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.] [M.J.R., J.]
12.12.2024

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order



WEB COPY



H.C.P.No.2913 of 2024



H.C.P.No.2913 of 2024

To

- 1.The Additional Chief Secretary to Government,
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Vyasarpadi, Chennai – 600 039.
- 5.The Additional Public Prosecutor,
Madras High Court.



WEB COPY



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and
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