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H.C.P.No.2352 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2352 of 2023

Naveen Kumar

... Petitioner

Vs.

1.State of Tamil Nadu

Rep.by 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 Commissioner,
The Commissioner Office,
Vepery, Chennai-7.

3.The Superintendent of Police
Central prison,
Puzhal, Chennai 66.

4.The Inspector of Police,
W31-All Women Police Station,
St. Thomas Mount, Chennai. ... Respondents

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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records relating to the Detention Order in Memo BCDFGISSSV No.383/2023, dated 02.09.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner Naveen Kumar S/o Seenivasan the detenu. Now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner Naveen Kumar S/o. Seenivasan aged about 23 years the detenu herein at liberty.

For Petitioner : Mr.D.Kanna
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

(Order of the Court was made by SUNDER MOHAN, J.)

The petitioner, Naveen Kumar S/o. Seenivasan, aged about 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 02.09.2023 slapped on him, branding him as a "sexual offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers, and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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2. Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is a delay in passing the order of detention.

4. In the instant case, admittedly, the detenu was arrested on 07.07.2023 and the detention order was passed on 02.09.2023. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court, in HCP No.1388 of 2022 [*Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332*], held as follows:

“6.... As between 08.04.2022 and 18.06.2022, it is well over two months and given the facts and circumstances of the instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped.”

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in *Sushanta Kumar Banik v. State of Tripura*,



reported in **2022 LiveLaw (SC) 813**, though in that case, the Hon'ble Supreme Court did not directly deal with the issue of delay in passing the detention order after the arrest of the detenu. The relevant observations of the Hon'ble Supreme Court are extracted hereunder:-

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

5. In yet another case, i.e., in *Nagaraj v. State of Tamil Nadu*, reported in **(2018) 3 MWN (Cri) 428**, this Court held that the delay of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Therefore, we are of the view that, in view of the unexplained delay in



passing the order of detention after the arrest of the detenu, the detention order is liable to be quashed.

6. We may note another aspect in this case that is worth mentioning. The detenu is stated to be involved in a solitary incident wherein he is alleged to have committed the offence under Section 307 of the IPC. Subsequently, the case was altered to one under Sections 323, 506(ii), 307 of the IPC and Section 5(l) r/w 6, 14(1) of the Protection of Children from Sexual Offences Act, 2012, and Section 67(B) of the Information Technology Act, 2000.

7. While expressing satisfaction that the detenu acted in a manner prejudicial to the maintenance of public order, the Detaining Authority stated as follows:

“Hence, I am satisfied that **Thiru Naveen Kumar**, committed offences of aggravated sexual assault, more than once, against the victim girl and in the present case, he had sexually harassed the victim girl, recorded her nude videos without her consent and forwarded the same to her father and threatened him and thereby acted in a manner prejudicial to the maintenance of public order and also acted in a manner which will destroy the society's normal life and as such **Thiru Naveen Kumar** is a **Sexual Offender** as contemplated under Section 2(ggg) of the Tamil Nadu



Act 14 of 1982. By committing the above described grave crime of aggravated penetrative sexual assault against the minor girl in his house, **Thiru Naveen Kumar** has created alarm and a feeling of insecurity in the minds of the children and women of the area, and thereby acted in a manner prejudicial to the maintenance of public order.”

8. The Hon'ble Supreme Court in ***Ram Manohar Lohia Vs. State of Bihar and Another***, reported in **1965 SCC OnLine SC 9** had considered the difference between public order and law and order. The relevant observations are extracted hereunder:-

“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



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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 ordinary circumstances.”

9. As seen from the above observations, in order to categorise an act as prejudicial to the maintenance of public order, it must affect the community or the public at large. The facts of this case do not suggest that the community or the public at large were affected. This is the case of a dispute between two individuals, and it would only amount to a disturbance of law and order, which can be dealt with under the powers to maintain law and order. The detenu ought not to have been detained by invoking the preventive detention law. We are of the view that the Detaining Authority exceeded his powers conferred under the Act, while passing the order of detention, which has to be exercised only to prevent disturbances to public order.



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WEB COPY 10. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 02.09.2023 in BCDFGISSSV No.383/ 2023, is hereby set aside, and the Habeas Corpus Petition is allowed. The detenu, viz., Naveen Kumar S/o. Seenivasan, aged about 23 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
05.01.2024

pvs/ars

Index : Yes / No

Neutral Citation : Yes / No



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To
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State of Tamil Nadu
Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai Police Commissioner,
The Commissioner Office,
Vepery, Chennai-7.
3. The Superintendent of Police
Central Prison, Puzhal, Chennai 66.
4. The Inspector of Police,
W31-All Women Police Station,
St. Thomas Mount, Chennai.
5. The Public Prosecutor,
High Court, Madras.



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