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H.C.P.No.2458 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2458 of 2023

Shenbagavalli

... Petitioner / wife of the detenue

Vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government, Home,
Prohibition and Excise Department,
Fort St.George, Chennai-600009.

2.The Commissioner of Police,
Avadi City Police Commissioner,
Office of the Commissioner of Police,
Avadi, Chennai-600054.

3.The Superintendent of Police,
Central Prison,
Puzhal, Chennai-66.

4.The Inspector of Police,
Land Dispute Team-III,
Central Crime Branch,



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Avadi City, Chennai-54.

... Respondents

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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.233/BCDFGISSSV/2023, dated 11.11.2023 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband viz., HariGopal, S/o.Ramamoorthi. Now, confined at Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband at liberty.

For petitioner : Mr. N.Naresh

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner, wife of the detenu viz., HariGopal, S/o.Ramamoorthi. Now, confined at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.11.2023, in Memo No.233/BCDFGISSSV/2023, slapped on her husband, branding him as "GOONDA" as contemplated under Section 2(f)



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of the Tamil Nadu Act 14/1982.

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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 the case attributed to the detenu do not disclose any disturbance to maintenance of public order to warrant detention under the harsh detention laws.

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

"---- I am satisfied that B. Purusothaman is habitually committing offences and he is thereby acting in a manner prejudicial to the maintenance of public order and as such he is a "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The prejudicial activities of the accused B.Purusothaman made use of the alike businessmen those who had close contact with him by conversing cunningly and creating favourable situation for him with a intention of



cheating them continuously and purchased yarn in large quantities from them.

.... As a result of the cheating attitude of the accused, the genuine entrepreneurs scared that their business would be affected and also scared that they would lose their money.

..... I am further aware of the need for the preventive steps to restrain these activities of the accused, failing which they will indulge in such activities in future, which will be prejudicial to the maintenance of public order."

5. 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 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.”?



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6. 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. The ground case relates to forgery of the documents, whereby the accused herein had cheated the complainant by fixing an impersonator as owner of the property. The complaint, when read into, would reveal that there was no activity involved which could be prejudicial to the maintenance of public peace and order. So also, one adverse case relied upon by the detaining authority, also relates to similar forgery of documents with an intention to grab the property belonging to the complainant, which is only a civil dispute between two private parties. We are unable to comprehend as to how a civil dispute between private parties, as alleged, would in any way affect the maintenance of public peace and order. The detaining authority has apparently failed to apply his mind while invoking the detention law and thus had exceeded his powers conferred under the Act while passing the order of detention. We express our discontentment on the callous manner in which the stringent



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provisions of a detention law have been misused. In normal circumstances, when we encounter with such an illegal and unlawful action of the authorities, we would be passing deterrent orders by imposing costs on the concerned authorities. However, we refrain from doing so in the present case with a fond hope that the authority would mend its approach and refrain from passing such careless orders in future.

7. In the result, the detention order passed by the 2nd respondent dated 11.11.2023 in No.233/BCDFGISSSV/2023, is hereby set aside, and the Habeas Corpus Petition is allowed. The detenu, viz., HariGopal, S/o.Ramamoorthi, confined at Central Prison, Puzhal, Chennai, 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]
08.03.2024**

Anu
Index : Yes / No
Neutral Citation : Yes / No



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Anu

To

1.The Principal Secretary to Government, Home,
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Fort St.George, Chennai-600009.

2.The Commissioner of Police,
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Avadi, Chennai-600054.

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4.The Inspector of Police,
Land Dispute Team-III,
Central Crime Branch,
Avadi City, Chennai-54.

5.The Public Prosecutor,
High Court, Madras.

6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

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