



WEB COPY



HCP.No.2389 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2389 of 2023

K.Nagomi

...Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Dept.,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.

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

4.The Inspector of Police,
Team – 16, Land Fraud Investigation Wing-I,
Central Crime Branch, Chennai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the records in Detention order in



HCP.No.2389 of 2023

No.563/BCDFGISSSV/2023 dated 08.11.2023 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the detainee Thiru.Kamalakaran, S/o.Natarajan, aged 46 years, now confined in Central Prison at Puzhal, Chennai before this Court and set him at liberty.

For Petitioner	: Ms.R.Subadra Devi
For Respondents	: Mr.E.Raj Thilak, Additional Public Prosecutor assisted by Mr.C. Aravind

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The detention order dated 08.11.2023, branding the petitioner's husband Kamalakannan, S/o.Natarajan, as a 'GOONDA', as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, is put under challenged in the present Habeas Corpus Petition.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



HCP.No.2389 of 2023

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 Thiru Kamalakannan is committing crimes, came to adverse notice and in the ground case, he colluded with his associates to grab the property belongs to the complainant, created fake documents for the property, death certificate and legal heir certificate and executed release deed and power of attorney deed in favour of his associate and thus, Thiru Kamalakannan has acted 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. By committing the above described grave crime of fabricating documents and land grabbing Thiru Kamalakannan had created scare



HCP.No.2389 of 2023

and feeling of insecurity in the minds of the general public, who intent to purchase a piece of land, using their hard earned money and the general public who have purchased land, for their future and for the future of their wards and thereby acted in a manner prejudicial to the maintenance of public order.”

5. 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***, 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



WEB COPY



HCP.No.2389 of 2023

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.”?



HCP.No.2389 of 2023

6. As seen from the above observations, in order to categorize 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 detaining authority had placed reliance on an adverse case registered against the detainee, which relates to impersonation and forging of deed of power of attorney to trap the property of a third party. Likewise, the ground case relates to a property dispute between two private parties, wherein the detainee and another are alleged to have prepared a fake death certificate and registration of a release deed. Apparently, the alleged overt acts contributed to the detainee, in both the criminal cases, is in connection with a private land dispute. However, the Detaining Authority had placed reliance on the involvement of the petitioner in these two criminal cases and had come to the conclusion that he was fully satisfied that there was a compelling necessity to detain him nor prevent him from indulging from further activities in future, which would be prejudicial to the maintenance of the public order, under the provisions of the Tamil Nadu Act 14 of 1982.



HCP.No.2389 of 2023

7. When none of the activities alleged against the detainee involves any disturbance to the general public, we are of the view that the Detaining Authority has totally failed to apply his mind, while arriving at a subjective satisfaction that the detention of the petitioner's husband is imminent, for the purpose of maintenance of public order.

8. As per the decision rendered by the Hon'ble Supreme Court in *Ram Manohar Lohia (supra)* and in the light of the observations made in this order, the detention order is liable to be rendered as illegal.

9. We express our discontentment on the callous manner in which the stringent 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.



HCP.No.2389 of 2023

10. In the result, the detention order dated 08.11.2023 passed in No.563/BCDFGISSSV/2023 by the 2nd respondent is hereby set aside and the Habeas Corpus Petition stands allowed. The detenue viz., Kamalakannan, S/o.Natarajan, aged 46 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.]
13.03.2024

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

hvk



HCP.No.2389 of 2023

WEB COPY To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Dept.,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison at Puzhal,
Chennai District – 600 066.
- 4.The Inspector of Police,
Team – 16, Land Fraud Investigation Wing-I,
Central Crime Branch, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.2389 of 2023

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

hvk

H.C.P.No.2389 of 2023

13.03.2024