



WEB COPY



HCP.No.3078 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM :

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

H.C.P.No.3078 of 2024

Sandhiya

... Petitioner/Wife of the
detenu

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. District Collector and District Magistrate of
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
4. The Superintendent of Prison,
Central Prison,
Vellore.
5. The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 16.11.2024 in D.O.No.63/2024-C2 against the petitioner husband Jagadeesh, Male, aged 25 years, S/o. Vadamalai, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner	: Mr.S.Selvakumar
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 second respondent in D.O.No.63/2024-C2 dated 16.11.2024 is sought to be quashed in the present habeas corpus petition.

2. The impugned detention order has been issued relying on two adverse cases and the ground case. The adverse cases are registered under the provisions of Cigarettes and other Tobacco Products (Prohibition of advertisement and Regulation of Trade and Commerce, Production, Supply



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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.

5. In the light of the above discussion, we deem it appropriate that



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the cases registered against the detenu may be dealt with under the regular penal law by the Police Authorities.

6. Accordingly, the detention order passed by the second respondent in proceedings D.O.No.63/2024-C2 dated 16.11.2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Jagadeesh, aged 25 years, S/o. Vadamalai confined at Central Prison, Vellore 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.]
20.12.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda



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To

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1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. District Collector and District Magistrate of
Tiruvannamalai District,
Tiruvannamalai.
4. The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
5. The Superintendent of Prison,
Central Prison,
Vellore.
6. The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai District.
7. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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