



H.C.P.No.3123 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM:

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

H.C.P.No.3123 of 2024

V.Aishwarya

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The District Magistrate and District Collector,
Office of District Collector,
Erode District.

3.The Superintendent of Police,
Erode,
Erode District.

4.The Superintendent of Central Prison,
Central Prison,
Coimbatore District.

5.The Inspector of Police,
Bhavani Police Station,
Erode District.

... Respondents



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PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing to produce the body of the detenu by name Vijayaraj, husband of petitioner herein, aged 27 years, presently confined at Central Prison, Coimbatore, before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 14.11.2024 in Cr.M.P.No.58/Bootlegger/2024 C1 passed by the 2nd respondent, quash the same.

For Petitioner : M/s.Bharanidharan

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 proceedings Cr.M.P.No.58/Bootlegger/2024 C1, dated 14.11.2024 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.



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3. The learned counsel for the petitioner submitted that the impugned detention order has been passed relying on the cases registered under the provisions of the Tamil Nadu Prohibition Act, 1937.

4. A plain reading of the adverse cases would reveal that the cases were registered periodically, more specifically by conducting raid at the house of the detinue or in nearby petty shop. The way in which the prohibition cases are registered against the detinue raises serious doubt. Presuming that those cases were registered based on certain facts, the same can be dealt with under the ordinary law and by following procedures and the preventive detention in the present case in our considered opinion is unnecessary and the same is liable to be quashed.

5. Recently, the Hon'ble Supreme Court of India in the case of ***'Arjun Vs. State of Maharashtra & others'*** in ***'SLP (Crl.) No.12516 of 2024 dated 11.12.2024*** dealt with the criminal cases registered under prohibition law. Arguments have been advanced relating to several issues and the Court found that in as much as, none of the activities which form



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the basis of the detention order can be said to be affecting public order.

These prohibition cases registered on the basis that the detenu was selling illicit arrack in a hided place, would not constitute a ground to invoke Act 14 of 1982 since the public disorder as considered by the Apex Court is not satisfied. The public order has been defined in the case of '**Ram Manohar Lohia Vs. State of Bihar & another**', reported in '**1965 SCC OnLine SC 9**'. 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



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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.

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*



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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.”...

6. Accordingly, every bit of piece does not lead to public disorder.

When a person can be dealt with in exercise of the powers to maintain the law and order, unless the acts of the proposed detenu or the once which have the tendency of disturbing the public order, a resort to preventive detention would not be permissible.

7. Accordingly, the detention order passed by the second respondent, in Cr.M.P.No.58/Bootlegger/2024 C1 dated 14.11.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vijayaraj, S/o.Ravi, aged 27 years, (who is presently undergoing



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detention in Central Prison, Coimbatore), 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.)

19.12.2024

Index: Yes

Neutral Citation: Yes/No

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To

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

2.The District Magistrate and District Collector,
Office of District Collector,
Erode District.

3.The Superintendent of Police,
Erode, Erode District.

4.The Superintendent of Central Prison,
Central Prison, Coimbatore District.

5.The Inspector of Police,
Bhavani Police Station,
Erode District.

6.The Public Prosecutor,
High Court of Madras, Chennai.

7.The Joint Secretary to Government, Public (L&O) Department,
Fort St.George, Chennai.



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and
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