



H.C.P.(MD)No.1317 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
11.03.2024	19.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD)No.1317 of 2023

R.Tamilselvi

... Petitioner

vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus, calling for the entire records



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connected with the detention order passed in M.H.S.Confdl.No.33 of 2023, dated 27.03.2023, on the file of the second respondent herein, quash the same and direct the respondents to produce the detenu or body of the detenu, namely, the petitioner's son *i.e.*, Kannan, aged about 22 years, S/o.Rajan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

: Mr.S.Ravi

Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This Petition to quash the detention order dated 27.03.2023 under the Act 14/1982 issued against one Kannan is filed by the mother of the detenu on the ground that, the detention order passed without proper application of mind to the facts of the case.

2. The petitioner contended that her son was falsely implicated in two adverse cases and one ground case. All the three cases were registered by



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Radhapuram Police on 07.03.2023. Twenty days later, the detention order was passed on 27.03.2023 stating that Kannan is indulging in activities prejudicial to the maintenance of public order and public peace. The allegations against him in these three cases at the most will be only a 'law and order' issue and not a 'public order' issue. On the date of the detention order for the two adverse cases in Crime No.37 of 2023 and Crime No.38 of 2023, his bail applications were pending and for the ground case in Crime No.39 of 2023, he did not prefer any bail application. While so, without proper application of mind by citing a dissimilar case, the detaining authority has recorded that there is likelihood of getting bail in future and if the detenu is released on bail, he will indulge in activities prejudicial to public peace. Also, the similar case bail petition not supplied to the detenu. The detention order was not properly intimated to the relatives of the detenu. Under Section 3 (3) of the Act 14/1982, the detention order ought to be forwarded to the Government forthwith. In this case, the detaining authority had not complied the said mandatory provision. The copy of the report and the date of despatch of the report to the first respondent not furnished to the detenu. The detention order failed to inform the detenu that he has right to lead evidence through witness before the advisory board. The said failure has caused grave prejudice to the



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detenu. Apprehension of likelihood to get bail cannot be a reason for imposing preventive detention. The detaining authority failed to furnish the recommendation of the sponsoring authority in spite of demanding to furnish.

3. Rebutting each and every ground, the second respondent has filed counter affidavit. In the counter affidavit, it is stated that, based on the complaint given by one Senthil Kumar, S/o.Essakki, a case under Section 307 I.P.C. was pending against the detenu since 2021. The detenu was pressurising Esakki to advise his son to withdraw the complaint. When they refused to withdraw the complaint to threaten them, the detenu along with his associates set fire to the vehicles parked in front of the Essakki's house during the early hours of 07.03.2023. When Essakki noticed it and raised alarm, the detenu and his associates threatened him saying, like the two wheelers they will set him also under fire. Threw bottles at him and left the place. After some time, the same gang set fire to the two wheeler of one Arulkumar. Two cases were registered, one in Crime No.37 of 2023 and another in Crime No.38 of 2023. Coming to know about the registration of cases against him and his associates, at about 07.00 a.m. on the same day (07.03.2023), Essakki was passing through Radhapuram



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Government Hospital Bus Stop, the detenu and his associates came in a motor cycle and restrained Essakki and stabbed him with knife for not withdrawing the complaint against him. When the public nearby came to rescue Essakki, the detenu and his associates wielded the knife and threatened the public. The public got panic and ran away. The shop keepers closed their shop shutter out of fear. Due to this, routine normal traffic got affected. Hence, case in Crime No.39 of 2023 registered under Sections 294(b), 307 and 506 (ii) I.P.C. Being satisfied the conduct of the detenu is prejudicial to the maintenance of public order, the detention order was passed following the procedure.

4. The learned Additional Public Prosecutor submitted that, the detaining authority had taken note of the antecedent of the detenu and the apprehension of the public, who witnessed the occurrence before arriving at the subjective satisfaction. Since recourse to normal criminal law would not have the desired effect of effective prevention of the detenu from indulging in such activities in future, the preventive detention was ordered. The similar cases referred in the detention order to consider the likelihood of getting bail is based on the provision of law, which the accused in similar case face trial. One cannot expect similar



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case must be similar in all aspects. The case referred need not be identical case.

5. According to the learned Additional Public Prosecutor, the petitioner has placed incorrect facts in the grounds of the petition. The intimation about the arrest in the adverse cases was given to one Arunkumar, the friend of the accused. The intimation about the detention order dated 27.03.2023 was conveyed to the wife of the detenu on 28.03.2023 and the booklet furnished to the detenu contains all the necessary particulars.

6. The detention order informed to the Government forthwith in strict compliance of Section 3(3) of the Act 14/1982. The detenu was informed about his right to have assistance during personal hearing before the Advisory Board and same is expressly mentioned in Paragraph 8 of the grounds for detention. The copy of the affidavit given by sponsoring authority need not be served to the detenu. The content of the sponsoring authority is found in the detention order, which is suffice to the detenu to make effective representation. In this case, the detneu has availed his right to give representation challenging the detention order. There was no delay in considering the representation given on behalf of the detenu.



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7. After hearing the respective arguments of the learned counsels and on perusal of the records, this Court finds that the detenu was served with the copy of the detention order while he was in prison in connection with the adverse cases and ground case. The arrest in the adverse cases as well as the ground case duly informed to the relatives. The offences and the motive for the offences discloses it has all trappings of causing disturbance to public order. Threatening a witness for prosecution in an attempt to murder case in public with dangerous weapon with dire consequence, followed by threat to the public, who came to rescue the victim *prima facie* satisfies the test of threat to public peace.

8. The point which requires to be considered whether non-supply of similar case bail petition to the detenu any way prejudiced the detenu from making effective representation and whether the non-supply of the sponsoring authority affidavit will vitiate the detention order.

9. The learned Counsel for the petitioner apart from contending that copy of the similar case bail petition not supplied and it is not similar case, it is also his



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contention that likelihood of being released on bail cannot be a reason to invoke preventive detention. He submitted that a suspected accused cannot be deprived or denied of his liberty, which he is otherwise entitled to enjoy under due process of law, through colourable exercise of executive power under Section 3 of the Act 14/1982.

10. This Court concurs the submission of the learned counsel to the extent that preventive detention is not to deprive the liberty of a suspected accused, who under law entitle to get bail, but it is to prevent him from disturbing the public peace. To arrive at the subjective satisfaction about the propensity and possibility of causing disturbance to public peace, the detaining authority is expected to look into the offence committed and the likelihood of getting bail in the said offence. Reference to similar case bail order could be of a supporting factor to arrive at the subjective satisfaction, but grant of bail in similar case cannot be a *sine qua non* for slapping detention order. While so, non-supply of the similar case bail order, is of very less significance to give representation effectively. The detenu *de hors* of bail granted to him or to co-accused or accused in similar case or his bail petition pending or even if he not contemplating to file bail petition in future, has



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the right to challenge the detention order and seek for it's withdrawal. If his representation has enough merit to consider the offence alleged to have been committed by him is only in the nature of disturbance to law and order, but not an act disturbing public peace same will be considered.

11. In the light of the above legal position, when we examine the detention order, which speaks about the similar case bail orders, including bail granted to one of the co-accused in the adverse case and the bail order granted to the detenu in the ground case, we also find that the detention order say that for effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of the public order, the detention order is passed. The likelihood of getting bail or bail granted is not the reason for passing the detention order. The detention order says, to effectively prevent him for indulging in activities, which are prejudicial to the maintenance of the public order. Hence, the order passed in **Sudha vs. State of Tamil Nadu in H.C.P.(MD)No.1859 of 2022**, dated **18.07.2023**, does not apply to the facts of this case. As a consequence, the point raised that the copy of the similar case bail petition not furnished also pales to insignificance.

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12. The other ground regarding non-supply of the affidavit copy of the sponsoring authority, the records reveal that the detention order is passed under Section 3 (1) and not under Section 3 (3) of the Act 14 of 1982. The difference is apparent on the plain reading of the provision, which runs as below:-

"3.Power to make orders detaining certain persons.-

(1) The State Government may, if satisfied with respect to any bootlegger or cyber law offender or drug-offender or video pirates, or forest-offender or goonda or immoral traffic offender, sand offenders, or sexual offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the powers by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed



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three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time, by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

13. In the instant case, the detention order is passed under Section 3 (1) of the Act 14/1982 by the District Collector in exercise of his power conferred under Section (3)(2) of the Act 14 of 1982, vide G.O.(Ms)No.40 Home, Prohibition and Excise (xxi) Department, dated 11.01.2023. The detention order is without any reference to Section 3(3) of the Act 14 of 1982. Hence, furnishing the affidavit copy of the sponsoring authority does not arise. Even otherwise, we make it clear that the affidavit copy of the sponsoring authority need not be furnished, if the gist and substance of the affidavit forms part of the detention order, which will be sufficient for the detenu to make effective representation.



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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY ORDER MADE IN
H.C.P.(MD)No.1317 of 2023

19.03.2024