



HCP.Nos.2473 of 2024 batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

**H.C.P.Nos.2473, 2583, 2654, 2316, 2476, 3165, 2577, 2649, 2582, 2633,
2288, 2315, 2550, 2318, 3061, 2359, 2528 and 2711 of 2024**

HCP.No.2473 of 2024:

Sangeetha

... Petitioner

Vs.

- 1 The Secretary To Government
Home Prohibition And Excise Department
Secretariat Fort St George Chennai - 600 009.
- 2 The District Magistrate And
District Collector,
Kallakurichi District
Kallakurichi.
- 3 The Superintendent Of Police
Kallakurichi, Kallakurichi District.
- 4 The Superintendent Of Prison
Central Prison, Cuddalore,
Cuddalore District.
- 5 The State Rep By Its the Inspector Of Police,
CBCID Villupuram,
Villupuram District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records relating to the petitioners husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 25.08.2024 on the file of the second respondent herein made in proceedings D.O.NO.C2/45/2024 quash the same as illegal and consequently direct the respondents herein to produce the petitioners husband namely CHINNADURAI S/O.GUNDU IYYER @ PERIYASAMY AGED 36 YEARS before this High Court and set the petitioners husband at Liberty from detention now the petitioners husband detained at Central Prison Cuddalore.

For Petitioner : Mr.V.Manimaran

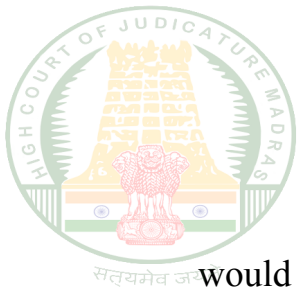
For Respondents : Mr.P.S.Raman asst. by
Mr.R.Muniyapparaj
Additional Public Prosecutor

COMMON ORDER

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

The batch of Habeas Corpus Petitions before us relating to an unfortunate incident of death of several persons on consumption of illicit arrack in two places namely Karunapuram, Sankarapuram and Madhavachery in Kallakurichi District.

2. Preventive detention orders issued under Act 14 of 1982 are impugned in these batch of Writ Petitions. Perusal of the detention orders

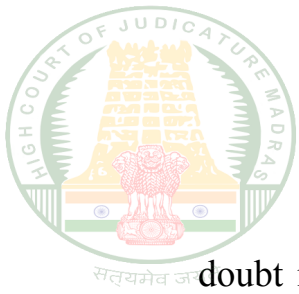


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would show that few detenues have already involved in some criminal cases and other detenues are detained only based on the ground case. An unfortunate incident occurred on 18th and 19th of June, 2024. Illicit arrack sold by detenues was consumed by some persons, resulted in loss of life, caused injuries to some persons and others faced various health issues including blindness. Serious damages caused to the health of the persons consumed illicit arrack, which created a panic in and around Kallakurichi District. The distributors of chemicals including methanol, ethyl alcohol and the persons transported, were also arrested and criminal cases are registered against them. Persons who manufactured the illicit arrack and sold the same in public were also arrested. Against all these arrested persons, preventive detention order have been passed by the detaining authority under Act 14 of 1982. The State invoked Section 2(b) of Act 14 of 1982.

3. Admittedly, Prohibition Wing of the police department is functioning in Kallakurichi District. They have not effectively prevented manufacturing of illicit arrack in that locality. Contrarily, cases are registered against the few sellers repeatedly, which is creating a serious



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doubt in the mind of the case about the genuinity of those criminal cases registered. It is not a case where police officials, revenue officials are unaware of selling of illicit arrack in Kallakurichi District. But an inefficient action, omissions, commissions and lapses resulted in selling of illicit arrack in large scale is going on for a long time. Those officials who are responsible and accountable also must be prosecuted. It is brought to the notice of this Court that the Division bench of this Court already handed over the investigation to the CBI, which was confirmed by the Hon'ble Supreme Court of India. Thus, those aspects are to be investigated by CBI for initiation of all further appropriate actions.

4. The respective learned counsels appearing on behalf of the detenues would mainly contend that there was an enormous delay in passing the impugned detention orders from the date of arrest of the detenues. Therefore, preventive detention is an after thought and more so, the detenues have not filed any bail petition, and in some cases where bail petition are filed, but not granted. The detention orders are passed after a lapse of about 2 months from the date of arrest. Therefore, the relevancy for invoking preventive detention law lost its significance and thus, the

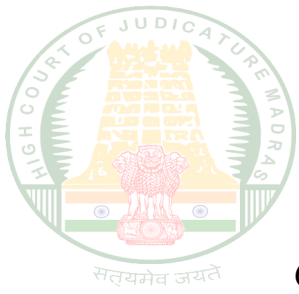


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preventive detention orders are liable to be set aside. Criminal cases are registered against the detainees in Crime No.2 of 2024 for the offences under Sections 328, 304(2) IPC and 4(1)(i), 4(1-A) TNP Act and Crime No.3 of 2024 for the offences under Sections 328, 302 IPC and 4(1)(i), 4(1-A) TNP Act and Crime No.4 of 2024 for the offences under Sections 328, 302 IPC r/w 4(1)(i), 4(1-A) TNP Act.

5. The chemical dealers involved in the criminal case are native of Northern India and they do not know reading of Tamil language. Though they speak Tamil language, they cannot read the documents supplied to them in Tamil language. It is not in dispute that in respect of those detainees, the documents relied on by the Detaining Authority were not translated into the language known to them, despite the request made to the competent authorities. Thus, the non translation of the documents relied on in the language known to the detainees remain fatal and it caused prejudice to the detainees to submit their representation in an effective manner, which is a valid right conferred under Act 14 of 1982 and the Constitution of India.

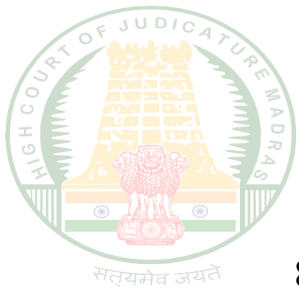


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6. It is brought to the notice of this Court that manufacturing of illicit arrack and selling in large scale is going on for several years with the blessings and assistance of the prominent political persons in that locality and with the active support of the police, revenue and other connected departments. In the present case, on account of over dosage of mixing of chemicals, including methanol caused death to the consumers and serious health ailments including blindness.

7. Mr.P.S.Raman, learned Advocate General would oppose by stating that the death of innocent persons who consumed illicit arrack resulted in public disorder in that locality. The State is in the process of handing over the investigation to the CBI, as per the directions of this Court and confirmed by the Apex Court of India. Near about 70 persons died. 161 persons suffered various health issues and few turned into blind. Thus, the State is justified in issuing the order of detention by invoking Act 14 of 1982.



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8. We have considered the argument as advanced between the parties to the lis on hand.

9. It is not in dispute that the impugned detention orders have been passed with a delay of about 2 months from the date of arrest of the detenues in connection with the criminal cases registered in Crime No.2, 3 and 4 of 2024. The delay in passing the detention order under the preventive detention law has been considered by the Hon'ble Supreme Court in the case of *Licil Antony Vs. State of Kerala*¹ held as follows,

“We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be a live-link between the prejudicial activity and the order of detention. COFEPOSA intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a pragmatic view. No hard-and-

¹ 2014 11 SCC 326



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fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay, that has to be satisfactorily explained. After all, the purpose of preventive detention is to take immediate steps for preventing the detenu from indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case.”

10. Even recently, the Supreme Court of India in the case of *Arjun Vs. State of Maharashtra*² in SLP.Crl.No.12516 of 2024 dated 11.12.2024,

12. The distinction between a public order and law and order has been succinctly discussed by

² 2024 LiveLaw (SC) 982



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Hidayatullah, J. (as His Lordship then was) in the case of Ram Manohar Lohia v. State of Bihar and Another¹:

“54. ... 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 (1966) 1 SCR 709 : 1965 INSC 175 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....

55. It will thus appear that just as ‘public order’ in the rulings of this Court (earlier



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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 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.”

13. It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

14. Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by this Court in the case of Ram Manohar Lohia (supra), it will be appropriate to



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reproduce the following paragraph from the judgment of this Court in the case of Aameena Begum v. State of Telangana and Others².

“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in *Arun Ghosh v. State of W.B.* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 :

1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3) “3. ... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

39. In *Arun Ghosh* case [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing,



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harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read : the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)” (2023) 9 SCC 587

40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3) “3. ... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not



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disturb the society to the extent of causing a general disturbance of public tranquillity.

It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its effect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

41. In *Kuso Sah v. State of Bihar* [*Kuso Sah v. State of Bihar*, (1974) 1 SCC 185 : 1974 SCC (Cri) 84] , Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6) “4. ... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ... ***

6. ... The power to detain a person without the



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safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.” (emphasis supplied)

15. As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.”

11. Preventive detention laws are draconian in nature. It infringes the personal liberty of a person, a fundamental right of citizen enshrined under the Constitution of India. Constitutional Courts time and again reiterated that preventive detention law is to be invoked sparingly and in exceptional



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cases, where there is a likelihood of causing breach of public order. Subjective satisfaction of the detaining authority based on the materials available in record for invoking preventive detention law is of paramount importance. Preventive detention law cannot be invoked in a routine manner by the authorities with an idea to punish the persons who are involved in a criminal case. In the event of issuing the preventive detention for the purpose of punishing a person, who has involved in a criminal case, the Constitutional Courts have to step in and ensure that such persons are set at liberty forthwith.

12. The difference between “Public disorder” and “Law and Order” are distinguished by the Hon'ble Supreme Court in the case of **Ram Manohar Lohia v. State of Bihar** reported in [AIR 1966 SC 740].

“12. The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

“51. We have here a case of detention under



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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 disorders or only some of them? 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



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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.

52. 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 affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next



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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.”

13. In the present case, there was a delay of about 2 months in issuing the detention order. The detenues are in actual imprisonment for about 5 to 6 months under the preventive detention law. On account of efflux of time and the fact that the detenues are in imprisonment for about 5 to 6 months, the element of likelihood of causing breach of public order as required under Act 14 of 1982 become lost its relevance. Keeping the detenues under preventive detention law anymore may not yield any result, since the investigations into the criminal cases have already been completed by the State police and interim charge sheet has been already filed. Therefore, this Court is of the considered opinion that the detention under preventive detention law is no more required and more so, the delay



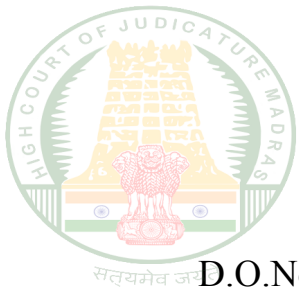
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and non translation of certain documents to few detenues are also fatal.

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14. It is brought to the notice of this Court that bail has not been granted to any of the detenues. In the event of filing any bail petition, the Investigating Agency hereinafter CBI is at liberty to oppose the bail petition or in alternate, request the Court to impose stringent conditions till the disposal of the criminal cases. Contrarily keeping the detenues under preventive detention law would undoubtedly offend their personal liberty as ensured under the Constitution of India.

15. Accordingly, the detention orders issued by the second respondent in D.O.No.C2/45/2024 dated 25.08.2024, D.O.No.C2/47/2024 dated 28.08.2024, D.O.No.C2/60/2024 dated 21.09.2024, D.O.No.C2/42/2024 dated 21.08.2024, D.O.No.C2/54/2024 dated 11.09.2024, D.O.No.C2/58/2024 dated 18.08.2024, D.O.No.C2/48/2024 dated 28.08.2024, D.O.No.C2/52/2024 dated 09.08.2024, D.O.No.C2/40/2024 dated 20.08.2024, D.O.No.C2/59/2024 dated 21.09.2024, D.O.No.C2/39/2024 dated 20.08.2024, D.O.No.C2/44/2024 dated 25.08.2024, D.O.No.C2/49/2024 dated 28.08.2024,



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D.O.No.C2/41/2024 dated 21.08.2024, D.O.No.C2/46/2024 dated 25.08.2024, D.O.No.C2/43/2024 dated 25.08.2024, D.O.No.C2/61/2024 dated 26.09.2024 and D.O.No.C2/53/2024 dated 09.09.2024 are hereby set aside and the Habeas Corpus Petitions are allowed. The respective detainees connected with the above impugned detention orders are directed to be set at liberty, unless their confinement is required in connection with any other cases.

[S.M.S., J.]

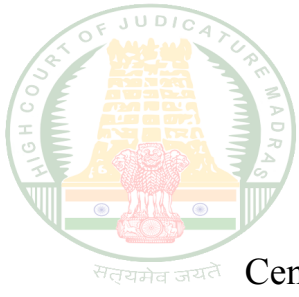
[M.J.R., J.]

06.01.2025

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
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To

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Home Prohibition And Excise Department
Secretariat Fort St George Chennai - 600 009.
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Kallakurichi District
Kallakurichi.
- 3 The Superintendent Of Police
Kallakurichi, Kallakurichi District.
- 4 The Superintendent Of Prison



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Central Prison, Cuddalore,
Cuddalore District.

- 5 The State Rep By Its the Inspector Of Police,
CBCID Villupuram,
Villupuram District.
- 6 The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
- 7 The Public Prosecutor,
Madras High Court.



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