

A.Kamala vs The State on 9 August, 2024

Author: S.M.Subramaniam

Bench: S.M.Subramaniam, V.Sivagnanam

H.C.P.No.1163

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2024

PRONOUNCED ON : 09.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1163 of 2024

and

CrI.M.P.No.8104 of 2024

A.Kamala

... Petitioner

Vs.

1.The State,
Represented by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 9.

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Inspector of Police,
Chennai City CCD-I,
Chennai.

4.The Superintendent,
Central Prison, Coimbatore.

... Respondents

Page 1 of 56

<https://www.mhc.tn.gov.in/judis>

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd respondent on 12.05.2024 in No.465/BCDFGISSSV/2024 and to quash the same and direct the respondents to produce the body of the detenu Shankar @ Savukku Shankar S/o.Achimuthu, aged about 48 years, before this Court and set him at liberty. He is now detained at Central Prison, Coimbatore.

For Petitioner

: Mr.C.
For M

For Respondents

: Mr.E.
Addit

ORDER

S.M.SUBRAMANIAM, J.

T a b l e o f C o n t e n t s	I . F A C T U A L
MATRIX:.....	3 II. SUBMISSION ON
BEHALF OF THE PETITIONER:	7 III. REPLY ON BEHALF OF THE
RESPONDENTS:.....	14 IV. LEGAL
POSITION:.....	18 V.
DISCUSSIONS:.....	25 (A)
MALICE:.....	35 (B) BALANCE
BETWEEN INDIVIDUAL RIGHTS AND PUBLIC ORDER:.....	39 (C) FREEDOM OF SPEECH AND
EXPRESSION:.....	40 (D) CRITICISM AND UNFAIR
OPINION:.....	42 (E) SOCIAL MEDIA AND HUMAN MIND IN
T A N D E M W I T H F R E E D O M O F	
SPEECH:.....	43 VI.
REGULATIONS – THE NEED OF THE HOUR:.....	47 VII. FREEDOM
OF PRESS:.....	49 VIII.
CONCLUSION:.....	53

<https://www.mhc.tn.gov.in/judis> I. FACTUAL MATRIX:

Under assail in the present writ petition is the detention order passed by the Commissioner of Police, Greater Chennai dated 12.05.2024. Two adverse cases are relied on the impugned detention order for invoking Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [hereinafter referred as 'Act 14 of 1982'].

2. The petitioner is the mother of the detenu. The Detenu was arrested on 04.05.2024 by the Inspector of Police, Cyber Crime, Coimbatore City in Crime No.123 of 2024 under Section 509 of Indian Penal Code (IPC) read with Section 4 of Tamil Nadu Prohibition of Harassment of Women

Act, 1998, Section 67 of the Information Technology Act, 2000 and was lodged in Central Prison at Coimbatore. On 08.05.2024, a complaint was received from Mr.Balamurugan, Superintendent Engineer in Construction Wing, Chennai Metropolitan Development Authority (CMDA) and First Information Report (FIR) in Crime No.158 of 2024 was registered under Sections 465, 466, 471, <https://www.mhc.tn.gov.in/judis> 474, 420 of Indian Penal Code (IPC). On 09.05.2024, the detenu was formally arrested (adverse cases) in Crime Nos.154 and 155 of 2024 and was produced before the Learned Metropolitan Magistrate, Chennai and the remand was rejected in above cases. On 10.05.2024, the Inspector of Police / 3rd respondent formally arrested the detenu in Crime No.158 of 2024 and was remanded. The detenu filed Bail Application in Crime No.158 of 2024 and it was pending on the file of Learned Metropolitan Magistrate of CCB and CBCID Court at Egmore, Chennai. On 11.05.2024, the 3rd respondent submitted a proposal to detain petitioner's son Mr.Savukku Shankar (detenu) to the Detaining Authority. Consequently, the 2nd respondent / Commissioner of Police, Greater Chennai on 12.05.2024 has passed Detention Order against detenu. The order of detention was served on the detenu at Coimbatore Central Prison along with the grounds of detention and the booklet. The petitioner mother of the detenu made representations on 14.05.2024 and 21.05.2021 to the Detention Authority, which were received on 15.05.2024 and 22.05.2024 and rejected on 16.05.2024 and 24.05.2024. Before rejection of representation dated 21.05.2024, the Government approved the Detention Order in G.O.RT.No.3093, Home Department dated 22.05.2024.

<https://www.mhc.tn.gov.in/judis>

3. On 12.05.2024, the order of detention had been passed by the 2 nd respondent in exercise of his powers under Section 3(1) of Act 14 of 1982 and branded the detenu as “Goonda”. The ground for the detention in Crime No.158 of 2024 under Sections 465, 466, 471, 474, 420 of IPC instituted pursuant to the complaint made Mr.Balamurugan, Superintending Engineer, CMDA alleging circulation of false documents on social media with reference to the tender process in CMDA for construction of new Bus Terminus at Kilambakkam.

4. The Detaining Authority have further referred two adverse cases registered;

(1) Chennai City, Cyber Crime Division-I, Crime No.154 of 2024 under Section 294(b), 354D, 506(i), 509 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 for the alleged publication of an article about a journalist making false statement amounting to character assassination.

(2) Chennai City, Cyber Crime Division-I, Crime No.155 of 2024 under Sections 294(b) and 506(i) of IPC on the complaint of a social activist for levelling demeaning allegations against Women Police Personnel in an <https://www.mhc.tn.gov.in/judis> interview published in a YouTube Channel.

5. The petitioner filed the present Habeas Corpus Petition on 23.05.2024. On 24.05.2024, the Division Bench of this Court taken up the matter for final hearing and one of the Hon'ble Judges quashed the Detention Order and the other Learned Judge had taken a view that an opportunity must be afforded to the State to file counter affidavit. The case was referred to the Third Learned

Judge by the Hon'ble Acting Chief Justice. The Third Learned Judge passed an elaborate order and permitted the State to file counter affidavit in the Habeas Corpus Petition and held that the matter is to be reheard by the Division Bench deals with Habeas Corpus Petition. Consequently, the matter was listed before the Division Bench. The petitioner approached the Hon'ble Supreme Court of India in Special Leave Petition in SLP (Crl).Nos.8706 and 8707 of 2024 and Transfer Petition (Crl) No.597 of 2024. The Hon'ble Supreme Court of India disposed of the matter with a direction to hear the matter as expeditiously as possible and granted interim bail to the detenu.

6. When the present Habeas Corpus Petition was taken up for hearing by the Predecessor Bench of this Court, the Hon'ble Judges recused <https://www.mhc.tn.gov.in/judis> themselves from hearing the present Habeas Corpus Petition in H.C.P.No.1163 of 2024. Thereafter, the Habeas Corpus Petition was listed as per roster by the Hon'ble Acting Chief Justice before this Bench.

7. In the above backdrop, the present Habeas Corpus Petition has been listed before this Bench. Pleadings are completed and the parties are heard. II. SUBMISSION ON BEHALF OF THE PETITIONER:

8. The learned counsel for the petitioner would submit that in the impugned Detention Order, it is stated that the detenu was remanded in Crime No.158 of 2024 and lodged at Central Prison, Coimbatore as a remand prisoner. He moved a Bail Application, which was pending. In a similar case, in Crime No.66 of 2023, bail was granted by the Learned Judicial Magistrate, Alandur in Crl.M.P.No.5181 of 2023. Thus, the Detaining Authority inferred that it is very likely of his coming out on bail in Crime No.158 of 2024. If the detenu comes out on bail, he will further indulge in such further activities in further, which are prejudicial to the maintenance of 'Public Order' under the provisions of the Act 14 of 1982. The very inference made by the Detaining Authority is untenable, in view of the fact that the allegations in Crime No.66 of 2023 is different and distinct and not identical or similar. Therefore, the <https://www.mhc.tn.gov.in/judis> very basis for Detention Order is untenable.

9. It was further contended that the impugned Detention Order has no legs to stand under Scrutiny of Law. Arrest was made on 10.05.2024 and the video referred in the Detention Order was broadcasted on 11.02.2024. The order of detention reveals that the passengers at Chennai's New Kalaignar Centenary Bus Terminus in Kilambakkam staged protest alleging the non- availability of buses services on 10.02.2024. But the impugned order states that the information contained in the mail was published in M/s.Savukku Media on 11.02.2024. The contradiction apparent on the face of it, would be sufficient to arrive at a conclusion that an element of breach of public order has not been established.

10. The petitioner contented that the 2 nd respondent lacks jurisdiction, since adverse notice was considered in Crime Nos.154 and 155 of 2024. In both the cases, the Learned Additional Metropolitan Magistrate, Egmore, Chennai had rejected the remand on the ground that the detention became unnecessary. Thus, there is no application of mind on the part of Detaining Authority. No untoward incident or element of breach of public order has <https://www.mhc.tn.gov.in/judis> been established in the impugned order.

11. Regarding the jurisdiction, the alleged occurrence of protest in the Kilambakkam bus stand was staged by the passengers falling within the territorial jurisdiction of Commissionerate of Tambaram. Thus, the complaint by the Superintending Engineer, CMDA before the 2nd respondent / Commissionerate of Chennai is not entertainable and thus, the impugned order lacks jurisdiction.

12. The Detaining Authority has not established that there is likelihood of grant of bail in Crime No.66 of 2023. The nature of cases where bail was granted are different and not similar. Therefore, the reasons stated in the Detention Order are untenable.

13. The agitation by the passengers for non-availability of bus services in Kilambakkam bus stand was staged on 10.02.2024. Complaint was given by the Superintending Engineer, CMDA on 08.05.2024. There is a long delay of about three months in registering the complaint, which would be sufficient to draw an inference that an element of Malice exists and Act 14 of 1982 has <https://www.mhc.tn.gov.in/judis> been invoked. There is no nexus between the complaint and detention, which would show non-application of mind.

14. The documents relied on by the Detaining Authority in the impugned order have not been furnished to the detenu. The remand report in Crime No.123 of 2024 had not been furnished to the detenu, which resulted in causing prejudice to detenu to submit his representations in an effective manner to the authority. The arrest intimation of the detenu in Crime No. 158 of 2024 was said to be given to the mother of the detenu, Smt. A.Kamala / petitioner on the same day in the impugned order. However, the booklet does not have any details regarding the name and address of the person to whom the intimation of arrest was informed. Column 6 in the said form is left blank. The Investigation Officer had himself served the copy of the Detention Order to the detenu at Central Prison, Coimbatore on 10.05.2024.

15. That being so, the documents served in the booklet refers that the detenu's mother was served the copy through registered post from Chennai on the very same day by the same Inspector of Police which raises suspicion. <https://www.mhc.tn.gov.in/judis>

16. The requisition made by the police to learned Judicial Magistrate- IV, Coimbatore city in Crime No.158 of 2024 relating to ground case had not been supplied to the detenu. The detention order was passed on 12.05.2024 and the Government approved the same in G.O.(RT).No.3093, Home Department date 22.05.2024.

17. In the counter affidavit filed by the 2 nd respondent, it is admitted that the representations dated 14.05.2024 and 21.05.2024 sent by the petitioner had been received by the 2nd respondent on 15.05.2024 and 22.05.2024. The representations were considered and rejected on 16.05.2024 and 24.05.2024. Even before the rejection of the representation on 24.05.2024, the Government had approved the detention on 22.05.2024. Thus, consideration of representation ended in futile exercise and the detention order is therefore infirm.

18. The detention order was signed and sealed at Chennai by the 2 nd respondent on 12.05.2024 Forenoon. The copy of the detention order was served to the detenu on the same day 12.10 P.M. at

the Central prison, Coimbatore, which is not viable and would establish that all the documents <https://www.mhc.tn.gov.in/judis> were prepared in advance at the whims and fancies of the 2nd respondent.

19. The documents served in the booklet to the detenu are illegible and the detenu loses his opportunity to make an effective representation. The Detention Order has been passed in exercise of the powers conferred on the 2nd respondent in G.O.(D).No.82 dated 15.04.2024. But the copy of the said Government order has not been furnished to the detenu. The translations made in certain documents are improper resulted in denial of an opportunity for representation.

20. Arrest intimation in Column No.8, whether the arrest person injured / sick, if so, whether he has been treated, the Investigation Officer has stated as 'NO'. However, in the remand order the learned Additional CMM, Egmore, Chennai has clearly stated that “the right hand of the accused is bandaged for treatment. Enquired”. The accused said that the prison authorities caused the injury and they assaulted by plastic pipe. Accused has taken treatment at Coimbatore Hospital for that injury. Further, the remand Order states that 'Injury is not mentioned in the arrest memo'. <https://www.mhc.tn.gov.in/judis>

21. The report of the Inspector of Police, Cyber Crime Police Station, Chennai is undated. The date of issuance of the report to the 2nd respondent Commissioner of Police, Chennai has not been stated. Regarding the bail petition referred in the Detention Order, the Criminal Miscellaneous Petition has not even numbered in Crime No.158 of 2024. Therefore, there is no possibility of grant of bail to the detenu. Thus, the ground for detention that there is a possibility of grant of bail is imaginary and the said ground is untenable. The arrest intimation letter by the Inspector of Police, Cyber Cell, Central Crime Branch, Chennai with reference to Crime No.154 of 2023 in Column No.6, the name and address of the person to whom the intimation of arrest was informed remains blank.

22. The learned counsel for the petitioner would submit that there is total non-application of mind on the part of Detaining Authority. The apprehension for commission of breach of public order is absolutely absent. The impugned order has been passed maliciously and to prevent the detenu from making speeches and making his opinion in social media against the Government of the day its officials and their functioning. Thus, the writ petition is to be considered.

<https://www.mhc.tn.gov.in/judis>

23. The learned counsel for the petitioner would submit that the detention is made to quell the voice of dissent of the detenu. The liberty of a journalist, who is anti-establishment and a critic of the Government is crippled. The respondents are not happy about the speeches and opinions raised against the Government of the day and having inconvenience with the voice of the detenu and they are strangling his voice through detention Order under Act 14 of 1982.

III. REPLY ON BEHALF OF THE RESPONDENTS:

24. The learned Additional Public Prosecutor appearing on behalf of the respondents strenuously opposed the grounds raised on behalf of the detenu by stating that the Commissioner of Police, Greater Chennai Police, in the capacity of Detaining Authority, has considered the two adverse cases and the ground case for the detention of the detenu as Goonda under preventive detention. The activities of the detenu in the above cases are prejudicial to the maintenance of public order and public peace. The Sponsoring Authority has initiated a proposal for the detention of the detenu as Goonda under preventive detention. After careful perusal of the records <https://www.mhc.tn.gov.in/judis> and material evidence, the Detaining Authority has passed the order of detention of the detenu as Goonda on 12.05.2024 in accordance with law. The detenu Mr.Shankar @ Savukku Shankar has acted in a manner prejudicial to the maintenance of public order and peace in the two adverse cases and in the ground case and as such, he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

25. It is contended that by considering the criminal activities of the detenu in the two adverse cases and in the ground case, the Sponsoring Authority has initiated a proposal for the detention of the detenu as Goonda under preventive detention. The detention order was passed by the Detaining Authority on 12.05.2024. The Government has approved the detention of the detenu Mr.Shankar @ Savukku Shankar in G.O.(RT).No.3093, Home, P&E (XIII) Department dated 22.05.2024. The Government has served the said GO to the detenu directly through the Prison Authority under proper acknowledgement.

26. In the adverse cases in Crime Nos.154 and 155 of 2024, the Learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, <https://www.mhc.tn.gov.in/judis> considered various aspects and rejected the request of the Inspectors of Police concerned for the remand of the accused under judicial custody on 10.05.2024. But in the ground case in GCP, CCB CCD-1 Crime No.158 of 2024, after hearing the arguments of both sides, the Learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, has remanded the accused Mr.Shankar @ Savukku Shankar to judicial custody till 24.05.2024. Considering the criminal activities of the detenu in the two adverse cases and in the ground case, the Sponsoring Authority has initiated a proposal for the detention of the detenu as Goonda under preventive detention. After careful perusal of the records and material evidences, the Detaining Authority has passed the order of detention of the detenu as Goonda on 12.05.2024.

27. The detenu is in remand in CCB, CCD-I Crime No.158 of 2024 and he has moved Bail Application in the above case before the Court of Metropolitan Magistrate for CCB and CBCID. Cases in Sl.No.608 of 2024 and the bail petition were pending on the date of passing the Detention Order. Since in the similar case in CCB Crime No.66 of 2023 under Sections 420 IPC @ 406, 420, 465, 468, read with 120(B) of IPC, bail was granted to the accused concerned in a similar case, the Detaining Authority has inferred that <https://www.mhc.tn.gov.in/judis> it is very likely of the detenu will be released on bail in the ground case at the time of disposal of pending bail application. The bail order in a similar case has been considered and discussed on the grounds of detention only with a view to justifying the possibility of the detenu being released on bail in the ground case at the time of disposal of the pending bail application. Hence, the Detaining Authority has raised his apprehension on the grounds of detention.

28. It is stated in the counter filed by the respondents that there is a likelihood of grant of bail since in similar cases in Crime No.66 of 2023 bail was granted to the accused. The arrest intimation of the detenue was given to the petitioner, Smt. A.Kamala by the Sponsoring Authority in his letter dated 10.05.24 through Speed post. The order of detention was passed on 12.05.2024 and the Sponsoring Authority travelled through Indigo flight and reached Coimbatore International Airport at 11.05 hours. The Sponsoring Authority served the Detention Order along with the grounds of detention and booklet at 12.10 hours on the same day through Coimbatore Prison Authorities. All eligible and relied documents have been served to the detenu.

29. The representations dated 14.05.2024 and 21.05.2024 sent by the <https://www.mhc.tn.gov.in/judis> petitioner were considered and rejected. The criminal activities of the detenu in the two adverse cases and in the ground case are prejudicial to the maintenance of public order and peace. The detenu has created a feeling of insecurity in the minds of the public and has acted in a manner prejudicial to the maintenance of public order. Considering the two adverse cases and the ground case the Sponsoring Authority has initiated a proposal for detention of the detenu as Goonda under preventive detention. IV. LEGAL POSITION:

30. Respective learned counsels appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents relied on certain case laws. However, the cases relied on by the parties were elaborately considered by the Hon'ble Supreme Court of India in the case of Ameena Begum vs. State of Telangana and Others¹, the Apex Court considered earlier judgments of the Hon'ble Supreme Court in the said case. Therefore, it would be sufficient that the principles laid down in the said case has been considered for the purpose of dealing with the facts of the present case on hand. Relevant paragraphs are extracted hereunder;

“38. For an act to qualify as a disturbance 1 [(2023) 9 SCC 587] <https://www.mhc.tn.gov.in/judis> 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?”

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 <https://www.mhc.tn.gov.in/judis> 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 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) ... The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be <https://www.mhc.tn.gov.in/judis> astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.”

42. Turning our attention to Section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes “public order”. Even within the provisions of the Act, the term “public order” has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under Section 3(1) of the Act can only be issued against a detenu to prevent him “from acting in any manner prejudicial to the maintenance of public order”. “Public order” is defined in the Explanation to Section 2(a) of the Act as encompassing situations that cause “harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health”.

<https://www.mhc.tn.gov.in/judis>

43. *Ram Manohar Lohia* [*Ram Manohar Lohia v. State of Bihar*, 1965 SCC OnLine SC 9 :

(1966) 1 SCR 709] is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.

44. Rekha [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] too provides a useful guide. It is said in para 30 that : (SCC p.

255) “30. Whenever an order under a preventive <https://www.mhc.tn.gov.in/judis> detention law is challenged, one of the questions the court must ask in deciding its legality is : was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

.....

65. Interference by this Court with orders of detention, routinely issued under the Act, seems to continue unabated. Even after Mallada K. Sri Ram [Mallada K. Sri Ram v. State of Telangana, (2023) 13 SCC 537 : 2022 SCC OnLine SC 424] , in another decision of fairly recent origin in Sk.

Nazneen v. State of Telangana [Sk. Nazneen v.

State of Telangana, (2023) 9 SCC 633] , this Court set aside the impugned order of detention dated 28-10-2021 holding that seeking shelter under preventive detention law was not the proper <https://www.mhc.tn.gov.in/judis> remedy.

66. It requires no serious debate that preventive detention, conceived as an extraordinary measure by the Framers of our Constitution, has been rendered ordinary with its reckless invocation over the years as if it were available for use even in the ordinary course of proceedings. To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the “golden triangle” formed by Articles 14, 19 and 21, are diligently enforced.

.....

76. We turn to A.K. Roy [A.K. Roy v. Union of India, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] once again where the law is expounded in the following words : (SCC p. 321, para 70) “70. ... We have the authority of the decisions in ... for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21.” <https://www.mhc.tn.gov.in/judis> V. DISCUSSIONS:

31. Section 3(1) of Act 14 of 1982 stipulates the power of the State government to make orders detaining certain persons. Sub section (2) deals with the jurisdiction and Sub Section (3) stipulates procedures. In the ground case, the complainant lodged a complaint about the protest made by the bus passengers in Kilambakkam bus stand on 10.02.2024. The complaint was given by the Superintending Engineer, CMDA on 08.05.2024 after a lapse of about three months from the date of protest and publication made in M/s.Savukku Media on 11.02.2024. The unexplained delay raises

suspicion, more specifically, for the detention of the detenu under Act 14 of 1982. The arrest intimation issued by the Investigating Officer did not specify the name and address of the person to whom the intimation of arrest was informed.

Therefore the contention of the respondents that they have sent information to the mother of the detenu on the same day on 10.05.2024 raises a doubt. Pertinently, the Inspector of Police, Cyber Crime Police Station, Chennai served the arrest intimation to the detenu at Central Prison, Coimbatore on 10.05.2024. The intimation letter was sent to the mother of the detenu at Chennai on 10.05.2024 by the very same Inspector of Police, Cyber Crime Police Station. The manner of service to the mother of the Petitioner from <https://www.mhc.tn.gov.in/judis> Chennai and serving the arrest intimation to the detenu at Coimbatore by the very same Inspector of police raises a doubt.

32. Importantly, in the arrest intimation Column No.8, a question is asked, whether the arrest person injured / sick, if so, whether he has been treated. The answer stated by the Investigating officer is 'NO'. But the remand order passed by the learned Additional CMM, Egmore, Chennai dated 10.05.2024 reveals that the right hand of the accused is bandaged for treatment. The accused said that the Prison Authorities caused injury and they assaulted the detenu with plastic pipe. Accused has taken treatment at Coimbatore Hospital for that injury. The remand order further states that Section 41A of Criminal Procedure Code is not followed by the Investigating Officer. The injury is not mentioned in the arrest memo. The above facts would reveal that the arrest intimation itself is improperly given and the learned Additional CMM, Egmore found that the information given in arrest intimation regarding injury / sickness of the detenu is false. At the time of arrest in Crime No.158 of 2024, the detenu was already under Judicial custody in Central Prison, Coimbatore in connection with Crime No.123 of 2024. The special report of the Inspector of Police, Cyber Crime Police <https://www.mhc.tn.gov.in/judis> Station, Chennai is undated but communicated to the 2 nd respondent / Commissioner of Police, which is the basis for the Detention Order.

33. Regarding non supply of materials referred in the impugned detention order, the copy of Government order namely G.O.(D).No.82 dated 15.04.2024 has not been furnished to the detenu. The remand report in Crime No.123 of 2024 had not been served to the detenu, which caused prejudice to submit effective representation. Requisition petition made to learned Judicial Magistrate IV, Coimbatore city in Crime No.158 of 2024 had not been furnished to the detenu. In the counter affidavit filed by the 2 nd respondent, the representation dated 14.05.2024 and 21.05.2024 sent by the petitioner had been received by the 2nd respondent on 15.05.2024 and 22.05.2024. But the said representations were rejected by the 2nd respondent on 16.05.2024 and 24.05.2024. Pertinently, the Government had approved the detention of the detenu in G.O.(RT).No.3093, Home department dated 22.05.2024. Therefore the representation sent on 21.05.2024 could not have been considered before approving the detention of the detenu by the Government. It was rejected on 24.05.24 after grant of approval of detention by the Government. Therefore the detenu lost the opportunity of effective <https://www.mhc.tn.gov.in/judis> consideration of his representation.

34. Though the impugned detention order states that the acts committed by the detenu are prejudicial to the maintenance of public order the impugned order is devoid of reasons. Offences

disclosed in the adverse cases and the ground case do not disclose any serious threat to 'Public Order' and does not meet the threshold. An element of malice in the entire action is traceable through the documents furnished for issuing the impugned order of detention. It is apparent that there is a prejudicial view about the publication made by the detenu through his M/s.Savukku media. The criticism made against the Government and its officials prompted them to invoke preventive detention to stop the detenu from publishing any such criticism, opinions about the Government or its officials. The detention orders dated 12.05.2024 rests on the ground case in Crime No.158 of 2024 registered on the file of CCB, Cyber Crime division I, Chennai. The adverse cases are Crime Nos.154 and 155 of 2024 both on the file of Chennai City Crime branch, Cyber Crime Division I, Chennai. The Crime No.155 of 2024 was registered on 06.05.2024 based on the complaint lodged by one Veeralakshmi, a social activist. The detenu had put up a You Tube video making serious allegations <https://www.mhc.tn.gov.in/judis> against Women Police Personnel.

35. In Crime No.154 of 2024, the FIR was registered based on a complaint made by one Ms. Sandhya Ravishankar, Journalist who alleged that the detenu had made some derogatory comments against her. It is pertinent to note that this complaint was given by her to the CCB, CCD, Chennai on 27.08.2018 and again it was reiterated by her through subsequent complaints on 24.09.2018, 19.10.2018, 01.10.2019, 02.10.2019. But the FIR was registered only on 07.05.2024, after a lapse of nearly six years from the date of original complaint in Crime No.154 of 2024. This raises some dubious question as to why this complaint was registered after a lapse of nearly six years.

36. Pertaining to the the second Crime No.155 of 2024, it is to be noted that the complainant is a social activist, and she filed a complaint on 07.05.2024 stating that detenu had made some derogatory comments against Women Police Officers in a video posted in YouTube. In both these cases there runs a common thread that the allegations are not satisfactory and vague with no reference to any public being disturbed or incited in any way <https://www.mhc.tn.gov.in/judis> thereby affecting 'Public Order'. The complaints are made based on allegations made by detenu against persons and these two complaints for which F.I.R. was registered on the same day cannot form a sufficient basis for establishing a breach of public order. The complaint in both these cases can be addressed in the normal course of legal action under relevant provisions of Laws. But when invoking the Act 14 of 1982, it is the responsibility of the Issuing Authority to establish grounds of disturbance or apprehension of disturbance to 'Public Order'. Allegation or remarks made against individuals cannot constitute a threat to 'Public Order'. There must be a real threat or apprehension of large scale disturbance in the society or amongst the people at large to invoke the term of 'Public Disorder'. This Court does not find merit in the Detention Order issued by the 2nd respondent. Therefore there are serious doubts in the detention of the detenu in the present case as there is no sufficient ground to establish the breach of public order.

37. The ground case in Crime No.158 of 2024 is pertaining to an offence relating to forgery of tender documents in the CMDA. The detention order states that there a public protest in the Kilambakkam bus stand by the <https://www.mhc.tn.gov.in/judis> bus passengers for non availability of bus services. The said protest took place on 10.02.2024, whereas the detention order states that the detenu had published the alleged forged information only on 11.02.2024 at 08.41.P.M. The extract from the impugned detention order is as given below:

“The Contract of Operation & Maintenance of Kalaingar Centenary Bus Terminus (KCBT) Kilambakkam was awarded to single concessionaire M/s.BVG India Private Limited, on 23.11.2023. Further, the final Escrow Agreement between the Concessionaire and CMDA & Letter addressed to CMDA was sent to the following email addresses of the offices concerned on 04.02.2024 (Sunday) at 05:02 P.M. The same mail was resent to the corrected mail address on 04.02.2024 (Sunday) at 17:08 and the same was forwarded to the CMIDA email address from the above mail id on 05.02.2024 (Monday) at 11.41 hrs. It was found that the information contained in the mail was published in M/s.Savukku Media on 11.02.2024 at 08:41 P.M, which was equivalent to theft of data from a Government organisation. The false news was shared through the online blog 'Savukku Media' and on Thiru. Savukku Shankar's Twitter account and You Tube channel 'Savukku <https://www.mhc.tn.gov.in/judis> Media' in the by the accused Thiru.Savukku Shankar, based on a false document, to defame the State and CMDA. The above video was circulated to enhance the views of the Savukku Shankar's Savukku Media online pages. From that particular day, the number of channel viewers increased to more than 8,26,383 and subscribers increased to 5,21,000 to date. The complainant suspects that Savukku Media got illegal revenue using YouTube/Google by cheating. Later, on 10.02.2024, the passengers at Chennai's new Karunanidhi Centenary Bus Terminus in Kilambakkam staged a protest, alleging the non-

availability of buses due to the wrong influence of the above false propagandas. The Government's State welfare measurements and planning went in vain because people were misguided.”

38. Therefore, a protest happened even before publication of information by the detenu. This clearly shows inconsistencies in the timeline of events reported in the detention order thereby causing doubts in the impugned order. Further, there has been clear non-application of mind on the part of the Detaining Authority. In this particular incident as mentioned in the <https://www.mhc.tn.gov.in/judis> Detention Order there was a protest, but there is no mention of any law and order situation or public disorder.

39. Public disorder cannot include all law and order situations. As stated in the case of Ram Manohar Lohia vs. State of Bihar and Another², the Hon'ble Supreme Court held as follows;

“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 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 2 [1965 SCC Online SC 9] <https://www.mhc.tn.gov.in/judis> 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.

55. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) <https://www.mhc.tn.gov.in/judis> 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. 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.” (A) MALICE:

40. The detaining authority had registered both the adverse complaint on the same day i.e., on 07.05.24. The complaint in Crime No.154 of 2024 was registered after a lapse of nearly six years, whereas the other complaint in Crime No.155 of 2024 was pertaining to a derogatory remarks against Women Police Officers given by a social activist. The manner in which both these complaints were registered one with an inordinate delay and another <https://www.mhc.tn.gov.in/judis> which is pertaining to Police Officers raises several questions as to the intentions behind the detention order. Further, these two adverse cases do not form a sufficient ground to culminate into a case of Preventive detention under Act 14 of 1982. Further, the inconsistencies in ground case also shakes the foundation of the detention order. Hence, in case of Preventive detention, if there is any doubt, whether rules have been strictly observed, that doubt must be resolved in favour of the detenu.

41. In the case of Pramod Singla vs. Union of India³, The Hon'ble Supreme Court expressed a note of caution in exercising the power of Preventive detention laws by the State. The relevant observations are as produced below:

“25. Before we deal with the issues framed, we find it important to note that preventive detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the state, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenu is held in

arrest not 3 [2023 SCC Online 374] <https://www.mhc.tn.gov.in/judis> for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detainee, and even the slightest of errors in procedural compliances must result in favour of the detainee.

48. As has been mentioned above, preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are checks and balances on the power of the Government.

Every procedural rigidity, must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit to the case of the detainee. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties. This act of protecting civil liberties, is not just the <https://www.mhc.tn.gov.in/judis> saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British state."

42. Preventive Detention law subverts the exercise of an individual's fundamental right. Hence the Courts need to balance the individual freedoms and the public order. Unless there is a satisfactory ground to establish an apprehension of disturbance to public order, mere speeches aimed at the Government cannot be brought under the ambit of Act 14 of 82. These preventive detention laws ought to be used cautiously and sparingly.

43. The growth of our Great Nation lies in the progress and realisation of the vision of our Constitution. It is not the intention of our Constitution makers to bridle our freedoms, but rather to reasonably restrict them to ensure a certain decorum in the society. But as the Nation progresses the walls of fundamental rights and freedoms must widen and that can be a reality only by a responsible usage of the freedoms guaranteed to us in the Constitution.

<https://www.mhc.tn.gov.in/judis> (B) BALANCE BETWEEN INDIVIDUAL RIGHTS AND PUBLIC ORDER:

44. Further in the case on hand, the detenu claims to be a whistleblower and social media journalist. In cases where Preventive Detention laws are invoked, the Courts need to balance the individual's freedoms and rights with Public order.

45. In the case of Anuradha Bhasin vs. Union of India and Others 4, the Hon'ble Supreme Court held as follows;

"32. We need to distinguish between the internet as a tool and the freedom of expression through the internet. There is no dispute that freedom of speech and expression includes the right to

disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. [refer to Secretary, Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161; Shreya Singhal v Union of India, (2015) 5 SCC 1].

26. Expression through the internet has 4 [AIR 2020 SC 1308] <https://www.mhc.tn.gov.in/judis> gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.” (C) FREEDOM OF SPEECH AND EXPRESSION:

46. This Court shall never stifle or attempt to strangle Article 19(1)(a) of the Constitution of India. The Spirit of Article 19(1)(a) shall be ever evolving and the reasonable restrictions shall also shift its shape to stay in tune with Article 19(1)(a). The vision of our Law Makers is to ensure free voice for all and that shall be protected under the Constitution. The freedom of thought and expression shall be set free and any individual or State Machinery affected by the views of another shall fetch appropriate remedy available under relevant Criminal Laws, Cyber Laws and Defamation Laws instead embarking on indirect censorship by detaining persons under Goondas Act or unnecessary bridling of Article 19(1)(a) will be a hopeless pursuit with no end. Further, scope of conflict in decisions may arise so the best possible remedy for any aggrieved party is to take <https://www.mhc.tn.gov.in/judis> appropriate action with the aid of laws in place on commission of offence, if any. Selective detention of persons, spreading false information is also a threat to democracy.

47. In the Age of Internet, informations are overflowing from all quarters and booking each and every person for spreading false information is an impossible exercise. The threshold shall be to see if the publication of information cause any threat to public disorder. There are lakhs of people expressing their view in various forms across various medium. If the State Machinery starts hunting down each and every views and opinion, the voices will neither be brought down nor will this yield any viable result.

48. A People's Government as large as such should avoid engaging in such fruitless actions. We cannot be a democracy, if we receive same plausible views from all the citizens. There is bound to be discontent, which might be acceptable and unacceptable, but the duty of the State is much larger than engaging in legal battles to prevent such unacceptable opinions.

Choice of reaction is with the individual and the State as large as ours should show restraint, when reacting to people's opinions. <https://www.mhc.tn.gov.in/judis>

49. A State going behind each and every social media post or YouTube videos will not change any one's views instead it will make the people feel stifled of their Right to Speech. The beauty of our democracy lies in the Constitutionally guaranteed freedom and when the State Machinery themselves starts stifling with litigations, the people lose a faith in the democracy.

(D) CRITICISM AND UNFAIR OPINION:

50. The Institutions derive powers from the Constitution, which is made by the collective Will of the People of India are working for the people. Our duty is towards the people of our Great Nation. In the course of performance of duty, there is bound to be criticism from all quarters and appropriate remedial measures are to be undertaken, if the dissent holds good. In this process there is also scope for unacceptable criticism based on false premises and prejudiced views. Can the voices of everyone be strangled to curb these small groups spreading unpleasant opinions? The people consuming information in social media are the best judges of these views and opinions. The Constitutional Institutions cannot indulge in a process to influence the views of the people. Actions of the Institution speaks <https://www.mhc.tn.gov.in/judis> for themselves and the views may come and go.

(E) SOCIAL MEDIA AND HUMAN MIND IN TANDEM WITH FREEDOM OF SPEECH:

51. There is a need to differentiate between views / opinions and facts. In the absence of any satisfactory ground that the said act caused public disorder, mere publication of false information cannot constitute an offence under Section 3(1) of Act 14 1982. Question also arises with reference to expression of one's own opinions / views through social media platforms. How far can these expressions be made accountable? This gives rise to another relevant question. Whether the social media opinions influence us or does our already influenced mind search for content that aligns with our opinions? The choice of viewership is with the consumer. At an innate level, based on the parts of information at the disposal of a person, he tends to form an opinion based on what he perceives to be the truth. Once we perceive certain information with our own prejudiced values and morals, we tend to form an opinion by merging the unverified information with our own inborn principles and values and we tend to form a judgement about a particular person or the political ideologies or a political leader or a political party so on <https://www.mhc.tn.gov.in/judis> and so forth. But this cannot be ordained as the Truth. It is a 'mind perceived truth' which may differ from one person to another.

52. Views and opinions are subjective and based on one's own perception of information available at their disposal. No one can alter or change other's views or opinions. Once the power to change others views is taken away, a human mind then tries to block their views from reaching others. But is this the right way to go about? How many views/opinions can be blocked? Can we change the thoughts of a human mind, we can to some extent curtail the speech and expression but freedom of thought cannot be touched. It is the most unbridled.

53. Each and every human mind is different. The information at one's disposal is processed differently by each mind. The external interference in shaping people's opinions is limited only to the extent of delivery of information but how the mind processes and takes it further on is purely

subjective and changes from person to person.

54. It is with all these innate perceptions in mind that the viewer states viewing his/her preferred content on social media. The news content <https://www.mhc.tn.gov.in/judis> providers post their own perceptions on the social media platform. So the viewer tends to connect himself/herself to the content provider, who provides content aligning or affirming his/her own views. Viewers, who find contradictory content not ascribing to their own notions tend to disregard such content or criticise such content. This has so far been the basic nature of social media operation in today's scenario. So addressing the question aforewith, the content provider may not be held solely responsible for influencing a viewer, It can also be taken in another context that a viewer with a pre conceived notion has found affirmation in the views of a content provider. So the social media content is not thrust upon and pressurised into a viewer. The choice to consume a content is always at the disposal of the viewer. The viewer has a right to know the opinions of a fellow citizen on the policies or actions of the government or any other institution working for the people. Censorship against such views is unhealthy for good governance.

55. Dissenting views may be in different mediums, forms, languages. Some may even be unfair and prejudicial. If an individual feels affected by such views he/she can proceed against such content <https://www.mhc.tn.gov.in/judis> providers in manner known to law. But institutions like the State and its Machinery shall impose restraint, when taking legal course of action against its own citizen.

56. To illustrate further; 'Y' may post a content unfairly criticising a policy of the government which though a good policy and is in accordance with the laws in force. But 'Y' feels that it is a wrong policy and has to go. 'A', 'B' and 'C' are viewers watching the content. 'A' agrees with 'Y', 'B' agrees partially and 'C' does not agree with 'Y'. 'A', 'B', 'C' is believed to have their own views about the said policy. Can it be said that 'Y' is influencing them against the government thereby causing public disorder with his opinions.

57. The only difference is that 'Y' freely expressed his views whereas 'A', 'B' and 'C' stopped short of expressing their views. Instead they chose to agree or disagree with Y's view by sharing the content with others. Can viewership of such content itself be made an act of inducing public disorder. Therefore, by taking such stricter construction of content on social media the State is embarking on a never ending, unproductive journey. The spirit of Article 19(1)(a) will begin to loose its sheen through such <https://www.mhc.tn.gov.in/judis> endless narrowing down of its contours. Instead focus must be placed on allowing a harmonious expansion of Article 19(1)(a) and at the same time striking a balance through effective regulatory mechanisms not encroaching too far into Article 19(1)(a).

VI. REGULATIONS – THE NEED OF THE HOUR:

58. Prior to the advent of social media, news were consumed through Television networks / radio / Print media, which also contained opinions in the form of debates / editorials / columns / articles etc. In addition to these mediums, social media has evolved as a new space but the mind of a consumer has operated in a similar manner. People have always engaged in discussion on the

governance and public institutions. Such discussions today have found a wider reach through social media platforms where everyone have found their own space to express themselves freely. When in accordance with law, any such speech is protected by Article 19(1)(a). The audience today for such discussion have increased which is a symbol of healthy democracy. Any such new found space of freedom tends to take time to subject itself with regulations and rightful restraint. But this cannot be a sole reason to thwart their exercise of constitutionally guaranteed freedoms.
<https://www.mhc.tn.gov.in/judis>

59. The regulatory mechanisms for all other mediums has been achieved to a certain extent, whereas, social media still remains an unregulated space, thereby paving way for more infractions. The Regulations for the content creators has become essential to curb such violations on other's rights. It is also an incumbent duty of every citizen to use his/her rights in a responsible manner. Article 51-A enunciates the fundamental duties of every citizen. The fundamental duties were imbibed in the Constitution to ensure a harmonious relationship between the citizens of our Great Nation. Clause (h) thereby emphasises the need for scientific temper, humanism and the spirit of inquiry and reform. Clause (e) emphasis on the promotion of harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. Harmony in the worlds largest democracy like ours is an essential prerequisite in the pursuit of growth. A certain degree of empathy and humanism in the delivery of one's views and opinions can go a long way in promotion of harmony in the society. The delivery of one's views with a scientific temper is the goal of our Constitution and not to gag a person's speech altogether. The reasonable restriction comes into play only when a speech directly causes public disorder or acts against national security. Mere <https://www.mhc.tn.gov.in/judis> expression of views in the nature of political or ideological dissent cannot be viewed as causing public disorder.

60. How far the social media content incites public disorder is left to the subjective satisfaction of the Scrutinising Authority. But a common test to weigh this is to see as to whether any actual threat happened to the public order in consequence to a particular speech. Has there been any actual threat or apprehension of incitement of an offence against the public at large due to a speech or words used by a person has to be analysed on a case to case basis.

VII. FREEDOM OF PRESS:

61. The value of freedom of Press, which is implicitly enshrined under art 19(1)(a) was well known to the freedom fighters of our Great Nation. It was the Print media during the colonial era that helped spread the idea and vision of an Independent India. During pre-independence struggle, efforts were made to quell this medium but it was the Print media which helped in uniting the people of India to voice out against the repressive laws and policies of the British governance.

<https://www.mhc.tn.gov.in/judis>

62. It is to be noted that in today's scenario, the mode of communication has changed. Technology has paved way for social media platforms like You Tube, where citizens are able to voice their views and opinions. Holding an opinion is one's own right and right to divulge one's opinion is also an

element under Freedom of Speech subject to reasonable restriction. The qualities of decency and responsibility must form an essential aspect of Article 19(1)(a) and any breach of the same attracts the relevant laws in force. But Preventive Detention laws cannot be used to curb speeches where there is no disturbance to public order or security of the State. Speeches in order to be attracted under the Preventive detention laws such as Tamil Nadu Act 14 of 1982 must instil a sense of fear and harm to the public at large and incite a grave danger to public order. Breach of law and order by itself cannot be termed as public disorder.

63. The intention of Article 19(1)(a) is to promote more people from expressing their views freely, without any fear rather than to undermine their voices and thoughts. The Constituent assembly debates stand testimony to this fact. There were lengthy debates to scale down the restrictions under <https://www.mhc.tn.gov.in/judis> Article 19(2) as far as possible to further the agenda of free speech in an independent India. Many esteemed members of the Constituent assembly felt that the restrictions might dilute the freedom under Article 19(1)(a) but in order to protect the freedom of other citizens, the regulation under Article 19(2) was found to be indispensable.

64. Independence was achieved through years of struggle and through the words “Swaraj (Freedom) is my birth right and I shall have it”. Such words resonated far and wide for years and it was through the arduous struggle of our freedom fighters that we are able to live in an independent India envisioned by our forefathers, entrusting us with the Constitution to guide us. This individual freedom cannot be clamped down at the whims and fancies of the State. Extreme care and caution is a pre condition to invoke preventive detention laws and must not be used in a routine manner to suppress fundamental rights of the citizens. Excessive usage of such laws to restrict the right to free speech will deter other citizens from enforcing their right to criticism or opinions against the State thereby fracturing the spine of democracy.

<https://www.mhc.tn.gov.in/judis>

65. Freedom of Speech and expression is an inborn right. The State cannot strangle it unless it causes a serious threat to public safety and security. Speeches criticising the ruling government, its policies and actions or exposing corrupt or illegal actions in the public administration cannot in itself be termed as threat to 'Public order'.

66. When action curtailing freedom of speech is taken by a State or its Machinery against its citizens, extreme caution Must be taken and used in the most sparing ways. Such actions against citizens tend to spread a sense of fear and panic. No person should fear to speak his mind. But in cases where such strict action is taken, the people will fear to even communicate their views to the Government thereby inviting a sense of disconnection between the Government and the people. The Government can handle the social media as an effective tool to understand the grievances of a common man instead of trying to shut him down.

67. Instead spreading fear and panic among people by such drastic measures can prove to be a wrong course of action. Any human being shall be allowed to speak his personal views and opinions, A free country <https://www.mhc.tn.gov.in/judis> should always propagate free speech. Reasonable

restrictions is a narrow term and be used in the most sparing way possible.

68. The exchange of views and opinions of citizens about governance of the State is present from time immemorial. It was through such expression and speeches that the stifled voices found an awakening during Freedom movement paving way for an Independent India. And in this month of 77th Independence Day celebrations can the voices of the citizens be stifled again? This Court cannot narrow the walls of Article 19(1)(a). The soul of a healthy democracy lies in free speech.

VIII. CONCLUSION:

72. This Court would like to reminisce on the words of Rabindranath Tagore, “Where the mind is without fear and the head is held high Where knowledge is free Where the world has not been broken up into fragments By narrow domestic walls Where words come out from the depth of truth <https://www.mhc.tn.gov.in/judis> Where tireless striving stretches its arms towards perfection Where the clear stream of reason has not lost its way Into the dreary desert sand of dead habit Where the mind is led forward by thee Into ever-widening thought and action Into that heaven of freedom, my Father, let my country awake.”

73. In fine, we have arrived at an irresistible conclusion that the impugned order of detention is not in compliance with the essential requirement and ingredients as contemplated under Act 14 of 1982. Thus, the Detention Order issued by the 2nd respondent in proceeding No.495/BCDFGISSSV/2024 dated 12.05.2024 is set aside. Consequently, the Habeas Corpus Petition stands allowed. We direct the detainee / Mr.Shankar @ Savukku Shankar, male, aged 48, S/o Achimuthu, confined at Central Prison, Coimbatore to be set at liberty forthwith, if he is not required in any other case. Connected Miscellaneous Petition is closed.

74. The Registry, High Court of Madras is directed to communicate the <https://www.mhc.tn.gov.in/judis> advance copy of this Judgement to the Prison Authorities.

[S.M.S., J.] [V.S.G.,
09.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Secretary to Government,

The State, Home, Prohibition and Excise Department, Fort St. George, Chennai – 9.

2.The Commissioner of Police, Greater Chennai, Chennai.

3.The Inspector of Police, Chennai City CCD-I, Chennai.

4.The Superintendent, Central Prison, Coimbatore.

<https://www.mhc.tn.gov.in/judis> S.M.SUBRAMANIAM, J.

and V.SIVAGNANAM, J.

Jeni 09.08.2024 <https://www.mhc.tn.gov.in/judis>