Tamil Nadu Govt Misusing Preventive Detention Laws, Will Order State To Pay Compensation Whenever Detention Is Found Frivolous: Madras High Court

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
M.S. RAMESH; J., N. ANAND VENKATESH; J.
H.C.P(MD)Nos.1710 & 1206 of 2022 and Crl.M.P(MD)No.12692 of 2022; 14.11.2022
Sunitha *versus* **Additional Chief Secretary to Government**

For Petitioner: Mr. Henri Tiphagne, Mr. K. Dinesh

For Respondents: Mr. A.Thiruvadi Kumar, Additional Public Prosecutor

O R D E R

N.ANAND VENKATESH, J.

Introduction

Of all the things a system should fear, Complacency heads the list. The case on hand gave us a wake-up call and made us question ourselves as to whether we have become complacent and conditioned while dealing with preventive detention cases. Having got that call from within, we decided to shake up and wriggle out of the complacency and do a reality check.

Prelude

Preventive detention, commonly alluded to as the jurisdiction of suspicion, is constitutionally tolerated under Article 22(4) of the Constitution of India. It hardly requires any reiteration that preventive detention is essentially a freckle on the Constitutional canvas, and as Patanjali Sastri, J. reminds us, "*This sinister looking feature, so strangely out of place in a democratic Constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the premises of its Preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the infant Republic.*"

2. It is our common experience on Bench handling habeas corpus matters that scores of habeas corpus petitions are filed every day before the Principal seat as well the Madurai Bench, challenging the orders of detention passed under Act 14 of 1982. These petitions are admitted and are taken up after about 4-6 six months, owing to the existing backlog of cases, and are inevitably allowed directing the release of the detenues.

3. During the hearing of these cases, we thought it fit to have a look at the "*Prison Statistics India Report 2021"* of the National Crime Records Bureau of the Ministry of Home Affairs. At page-xiii of the said report, the following conclusion is found:

"Tamil Nadu has reported the maximum number of detenues (51.2%, 1,775) in the country followed by Telangana (11.4%, 396) and Gujarat (10.7%, 372) at the end of 2021".

4. Our curiosity having been kindled, we decided to examine the previous Prison Statistics India Reports which are freely available on the website of the National Crime Records Bureau, to examine the position in the previous years. We notice that the term "detenue" has been defined in the relevant glossary in the Prison Statistics in India Report to mean "*Any person detained in prison on the orders of the competent authority under the relevant preventive laws".*

5. Much to our dismay and disbelief, we found the following observations in the Prison Statistics in India Reports from 2011 to 2021:

Year of Report	Conclusion
2011	**Tamil Nadu has reported the highest number of Detenues** (983) lodged in various prisons. Other States which have reported considerable number of detenues in their prisons are Gujarat (401), Jammu & Kashmir (239), Uttar Pradesh (213), Manipur (161) and Madhya Pradesh (132). (page 31)
2012	**Tamil Nadu has reported the highest number of detenues** (523) lodged in various prisons. Other States which have reported considerable number of detenues in their prisons are Gujarat (519), Uttar Pradesh (197), Jammu & Kashmir (144), Madhya Pradesh (139), Manipur (132) and Karnataka (97). (Page 31)
2013	**Tamil Nadu has reported the highest number of detenues (1,781) lodged in various prisons**. Other States which have reported considerable number of detenues in their prisons are Gujarat (646), Karnataka (187), Madhya Pradesh (124), Uttar Pradesh (90), Jammu & Kashmir (72) and Nagaland (50).
2014	**Tamil Nadu has reported the highest number of detenues (1,892) lodged in various prisons**. Other States which have reported considerable number of detenues in their prisons are Gujarat (594), Karnataka (204), Uttar Pradesh (132).
2015	**Tamil Nadu has reported the highest number of detenues (1,268)** lodged in various prisons. Other States which have reported considerable number of detenues in their prisons are Telangana (339), Karnataka (232), Gujarat (219), Uttar Pradesh (153) and Jammu & Kashmir (90).
2016	**Tamil Nadu has reported the highest number of detenues (47.9%, 1,481 detenues)** in its jails followed by Jammu & Kashmir (14.0%, 432 detenues) and Telangana (9.6%, 297 detenues) as on 31st December, 2016. (page xv)
2017	**Tamil Nadu has reported the highest number of detenues (37.9%, 810 detenues**) in its jails followed by Gujarat (16.2%, 345 detenues) and Jammu & Kashmir (9.9%, 212 detenues) as on 31st December, 2017.
2018	**Tamil Nadu has reported the most number of detenues (31.1%, 741)** in the country followed by Gujarat (19%, 452) and Telangana (12.2%, 292) at the end of 2018.
2019	**Tamil Nadu has reported the most number of detenues** (38.5%, 1240) in the country followed by Gujarat (21.7%, 698) and Jammu & Kashmir (12.5 %, 404) at the end of 2019.
2020	**Tamil Nadu has reported the most number of detenues** (39.8%, 1,430) in the country followed by Gujarat (32.6%, 1,169) and Telangana (7.2%, 258) at the end of 2020.
2021	**Tamil Nadu has reported the most number of detenues** (51.2%, 1,775) in the country followed by Telangana (11.4%, 396) and Gujarat (10.7%, 372) at the end of 2021.

6. The aforesaid statistics speak for themselves. For a whole decade, the State of Tamil Nadu has occupied an unenviable first place in detaining the maximum number of people under its preventive laws in the entire country. In 2021, the State accounted for 51.2% of all detentions in the country. The numbers appear to only rise with each passing year. The inferences drawn can be twofold : either the State is inching towards lawlessness or that the jurisdiction of suspicion has now become a convenient and

potent weapon in the hands of the law enforcing agencies to indiscriminately detain people by a conscious abuse of its statutory powers. It is, therefore, clear to us that the spectre of gross abuse of preventive detention laws hangs over the State and has reached Orwellian proportions.

7. Incidentally, we have also noticed that between 2015-2021, the State of Telangana has also been ranking a distant second place. Recently, in ***Mallada K Sriram v. State of Telangana*** reported in **2021 SCC Online SC 524**, the Supreme Court observed:

"It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards."

8. It is clear that the Supreme Court has viewed the setting aside of 10 orders of preventive detention in one year in Telangana as a sign of "*a callous exercise of the exceptional power of preventive detention".* In this State, we can say, without fear of contradiction, that at least 15-20 detention orders are set aside every day both in the Principal seat as well as the Madurai Bench, not to mention the 10-15 fresh admissions under Act 14 of 1982 on a daily basis. In effect, we set aside 15-20 detention orders, only to find 10-15 fresh cases being added to the list. What does this demonstrate on the part of the authorities: extreme callousness or just plain indifference? It is to this question that we now turn.

9. The bulk of the cases, including the cases presently under discussion, involve a challenge to the orders of detention passed under Act 14 of 1982. The *"Crime Review, 2020"* a Report published the Tamil Nadu State Crime Records Bureau shows that 2457 persons were detained under Act 14 of 1982 out of 2913 detention orders passed by the State in 2020. This accounts for 84.3% of all detentions in the State. It is, therefore, necessary to briefly notice the provisions of this Act.

10. In 1982, Ordinance 1 of 1982 was promulgated by the Governor of Tamil Nadu titled "Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Ordinance, 1982". The statement of object and reasons, so far as they are presently relevant, reads as under:

"*5. In order to ensure that the maintenance of public order in this State is not adversely affected by the activities of these five classes of known anti-social elements without resorting to the National Security Act, 1980, it was considered necessary to enact a special legislation to provide as follows:—*

(a) To define with precision the terms "bootleggers", "drug offender", "goonda", "immoral traffic offender" and "slumgrabber";

(b) To specify their activities which adversely affect public order; and

(c) To provide for preventive detention of the persons indulging in these dangerous activities."

The ordinance was replaced by Act 14 of 1982 with effect from 10.02.1982. Forest offenders were subsequently added to the original five categories of offenders vide Amendment Act 1 of 1988. Video Pirates and Sand Offenders were added in 2004 and 2006 respectively. In 2014, cyber law offenders and sexual offenders were added to the kitty taking the total tally to 10.

11. Under the scheme of the Act, Section 3(1) authorizes the State Government, on being satisfied with respect to any bootlegger or cyber law offender or drug-offender or forest offender or goonda, to authorise the detention of such persons with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 3(2) empowers the District Magistrate or the Commissioner of Police to authorize the detention of such persons. Orders of detention made under Section 3(2) are to remain in force for a period of twelve days unless, in the meantime, the same is approved by the State Government.

12. An order of detention passed under Section 3(1) shall, in the first instance, remain in force for a period not exceeding three months which, upon satisfaction of the State Government, may be extended by such further period not exceeding three months at any point of time. The Act provides for the constitution of an Advisory Board under Section 9 to which all cases of detention are referred for review under Section 10. The Board may revoke or confirm the order of detention. If the detention is confirmed under Section 12, the order of detention can be continued for a total period of twelve months from the date of detention (vide Section 13). This is the broad scheme of the Act.

13. Given the vast array of powers under the Act, and the wide definition of "goonda" under Section 2(f), the Act has become the favourite hunting ground for the police to deal with common criminals and other undesirables. In other words, preventive detention has become an instrument of convenience whereby such elements are dealt with on the sure knowledge that once a detention order is passed, such persons are bound to be jailed for at least 3-6 months, pending reference to the Advisory Board or a challenge before this Court by way of a petition for habeas corpus.

14. Act 14 of 1982 has given rise to a unique potpourri of administrative law principles. Over 98% of the orders quashed by the Division Bench at Madurai this year would fall in one or the other of the following categories : i) delay in consideration of the representation made by the detenue, ii) failure to consider all the points raised in the representation, iii) non-supply of relevant documents, iv) supply of illegible documents, v) other cases of non-application of mind like "*possibility of coming out on bail*" etc. These grounds now form an integral part of what can now be termed as "*Goondas jurisprudence*" that has now come to represent the manner in which cases under Act 14 of 1982 are disposed by this Court.

15. Since this did seem like a *déjà vu* moment, we called for the records of the statistics of the cases under Act 14 of 1982 disposed by the Madurai Bench from January 2022 till 31st October 2022.

STATEMENT OF INSTITUTION AND DISPOSAL OF HCP (ACT 14 OF 1982) FOR THE YEAR 2022-FROM 01/01/2022 TO 31/10/2022

Sl. No	SUBJECT	NO. OF CASES FILED	NO. OF CASES DISPOSED	NATURE OF DISPOSAL

				ALLOWED	CLOSED
1.	GOONDAS ACT	961	517	445	72
2.	SEXUAL OFFENDER	114	50	45	5
3.	BOOTLEGGER	32	19	17	2
4.	CYBER LAW OFFENDERS	4	3	3	-
5.	DRUG OFFENDERS	207	109	81	28
6.	SAND OFFENDERS	7	6	5	1
7.	SLUM GRABBERS	-	-	-	-
8.	IMMORAL TRAFFIC OFFENDERS ACT	7	4	2	2
9.	VIDEO PRIVACY ACT	-	-	-	-
TOTAL		**1332**	**708**	**598**	**110**

16. From the aforesaid statistics, it is clear that out of the 517 cases filed challenging the detention under the Goondas Act, the detention order was quashed in 445 cases (86%) and the remaining 14% were cases which had become infructuous on account of the detention period coming to an end or on account of the detenues being released on the orders of the Advisory Board. In other words, there is not a single case, under the Goondas Act, in the current year before the Madurai Bench where the order of detention has been upheld.

17. Way back in 2009, a Division Bench of this Court was confronted with a similar situation in ***Irusammal v. State*** reported in **2008-2-LW (Crl)1433**, concerning a bootlegger under Act 14 of 1982. The Division Bench took note of the callous manner in which detention orders were being passed and observed:

"The reason for detaining a person in these Acts is interalia to safeguard the security of the State or maintain public order. This alone justifies executive detention without trial. When persons are detained on this ground the orders should be passed with extreme care and vigilance. But if orders are passed which beg to be quashed, then we may conclude that the authority is casual or careless. If so, even one hour of such detention is neither morally acceptable nor legally sustainable and may even justify the award of compensation."

The Division Bench then proceeded to set out the usual grounds of challenge, which have been set out supra in paragraph 12, and observed:

"The attitude of the Authority is inexplicable. On an earlier occasion, we had asked the learned Additional Public Prosecutor the reason for this. The learned Additional Public Prosecutor submitted today that a note has been circulated to the Sponsoring Authorities and the Detaining Authority regarding the decisions of this Court so that such mistakes are avoided. We express our appreciation of this prompt action of the learned Additional Public Prosecutor.

(vii) There is of course, the possibility of genuine errors creeping in, which are beyond the control of the Detaining Authority or the Sponsoring Authority. Sometimes it may be a purely

legal issue which results in quashing of the detention order. That is understandable, for after all no one is infallible. But these mechanical, recurrent, repetitive defects should definitely be avoided. We, in fact, asked the learned Additional Public Prosecutor whether the percentage of orders of detention being quashed is not very high. We do not have the statistics. But surely it will be more than 50% and not less. The State incurs a huge expenditure in this whole process of passing orders of preventive detention and detaining persons under the relevant Acts. Therefore, we expect the Detaining Authority and the Sponsoring Authority to be aware of the views of the Court before passing their orders of detention. That would result in saving of time and energy of the Court, time and energy of the officers concerned and in fact, more importantly saving of the funds of the exchequer. Above all, the protection of Article 21 of the Constitution of India cannot be whittled away casually."

18. It is clear from the aforesaid decision that, a specific stand had been taken by the State before the Division Bench that the sponsoring authorities and the detaining authorities are being sensitised on the decisions of this Court before passing orders of preventive detention. It appears that a note had also been circulated to these authorities requesting them to follow the law. Despite this directive, we have come across several cases where preventive detention is invoked at the drop of a hat against all and sundry including those involved in civil disputes and petty cases. In ***Karisma Bothra v. State*** reported in **2018 SCC Online Mad 9755**, a Division Bench of this Court observed:

"Last but not the least, what disturbs us, is that, all adverse cases against the detenue relate to civil transactions. It is because of this reason, that apart from booking the detenue under the provisions of the IPC, the detenue has also been booked under Sections 3 and 4 of the 2003 Act. The detenue may have been indulging in usury, however, that cannot lead to the conclusion that he is a "Goonda", as defined under Tamil Nadu Act 14 of 1982.

9. The State must revisit these cases and not wantonly and casually use the provisions of Tamil Nadu Act 14 of 1982, to detain persons, who may have, otherwise, infracted non-penal provisions of law.

10. The provisions of the Tamil Nadu Act 14 of 1982, in our view, are not to be used for the purpose such as the one, which has been brought to light in the instant case."

19. Even prior to that, the Supreme Court had noticed the growing trend of abuse of preventive detention laws in ***Birendra Kumar Rai v. Union of India*** reported in **(1993) 1 SCC 272**, and had observed thus:

"*Before parting with the case we would like to say that this Court has already laid down the law relating to detentions under the preventive detention laws during the last four decades. If the Government takes care that the detention cases arising under the preventive detention laws are handled by persons fully trained and having experience in such matters, the rights of the citizens can be safeguarded and the precious time of this Court can be saved. The detaining authorities are required to deal with such cases with more care and circumspection. They should not leave such cases to be dealt with by lower officials and should keep a track on such cases from beginning to the end and also take care that the representations, if any, made by the detenus are also dealt with expeditiously without any delay. In matters where the detention orders are passed in relation to such persons who are already in jail under some other laws, the detaining authorities should always apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail and stating the necessity of keeping such persons in detention under the preventive detention laws. We earnestly hope that the concerned authorities shall deal with such matters with special care."*

20. What is disconcerting is that this trend appears to be growing in other states as well. In ***V.Shantha v. State of Telangana*** reported in **(2017) 14 SCC 577,** detenue suffered preventive detention because he sold spurious seeds to farmers! The Supreme Court came down on what it termed as "gross abuse of statutory power" and observed:

"The order of preventive detention passed against the detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial well-being. Recourse to normal legal procedure would be time-consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the Preventive Detention Act as an extreme measure to insulate the society from his evil deeds. The rhetorical incantation of the words "goonda" or "prejudicial to maintenance of public order" cannot be sufficient justification to invoke the Draconian powers of preventive detention. To classify the detenu as a "goonda" affecting public order, because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of preventive detention. The grounds of detention are ex facie extraneous to the Act."

21. In ***Rekha v. State of T.N.*****,** reported in **(2011) 5 SCC 244**, the Supreme Court pointed out that whenever an order under a preventive 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 cases, the relevant provisions in the Penal Code were clearly sufficient to deal with the situation. Consequently, the detention orders are ex-facie illegal and constitute a clear case of abuse of statutory power. As was pointed out by Krishna Iyer, J. in ***Bhut Nath Mete* v. *State of W.B.*****,** reported in **(1974) 1 SCC 645**, which was a case concerning preventive detention :

"An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power."

22. Faced with this situation, must the Courts sit back and express helplessness? Even prior to the coming into force of the Constitution, this Court had clearly and unequivocally declared its role as a sentinel on the qui vive guarding the citizen from the excesses of the executive. In ***A.K Gopalan v. District Magistrate, Malabar*** **[AIR 1949 Mad 596]** Subba Rao, J. (as he then was) had the occasion to observe:

"*Now that we have attained freedom, it is the sacred duty of this court to see that no citizen of this province, whether he is rich or poor, whether he belongs to this or that political persuasion, is illegally detained for one minute. Of course, this is subject to the restrictions imposed on the personal liberty of the subject by the legislature in its supreme wisdom having regard to emergent situations. But the executive should not be allowed to overstep the boundaries fixed by the Legislature and must prove that the action is strictly within the spirit and the letter of the law. No provision of the statute restricting the liberty of the citizen can be overlooked and no breach of any provision thereof can be condoned on the ground of administrative convenience or pressure of work."*

23. The Supreme Court echoed a similar sentiment in ***Arnab Goswami v. State of Maharashtra*** reported in **(2021) 1 SCC 802,** when it observed:

"Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions."

24. In ***Ummu Sabeena v. State of Kerala***reported in**(2011) 10 SCC 781,** the Supreme Court reiterated this duty when it said:

"This facet of the writ of habeas corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority (see Halsbury's Laws of England, 4th Edn., Vol. 11, para 1454). That is why it has been said that the writ of habeas corpus is the key that unlocks the door to freedom (see The Common Law in India, 1960 by M.C. Setalvad, p. 38)."

As persistent judicial appeals to the authorities continue to fall on deaf ears, the time has come to devise new methods to secure implementation of the orders of this Court and the Supreme Court and to ensure that the rule of law is not reduced to a charade. We are constrained to do so on account of the fact that detention orders are being routinely set aside by the Courts and that too on the very same grounds/defects that have been expressly pointed out in ***Irusammal***. The irresistible inference is clearly one of extreme callousness. It is shocking that even after thirteen years, nothing has changed. Taking a cue from the observations made in ***Irusammal***, the time has now come for this Court to explore the possibility of awarding damages in cases where detention orders are set aside after finding that it was invoked on wholly extraneous and irrelevant grounds, which amount to a conscious abuse of power.

25. This approach can be seen in ***Sengodan v. State of Tamil Nadu*** (2010 4 MLJ 1165), in which a claim for compensation for wrongful detention under Act 14 of 1982 was dismissed by a learned Single Judge of this Court, upholding a claim of immunity under Section 16 of Act 14 of 1982. The Division Bench upheld the order on appeal. However, in ***N. Sengodan v. State of T.N.*** reported in **(2013) 8 SCC 664**, the Supreme Court set aside the order of the Madras High Court and awarded Rs. 2 Lakhs as compensation, holding that the State had abused its power citing the observations of Krishna Iyer, J. in ***Bhut Nath Mete***, referred *supra.*

26. Callous indifference in passing detention orders coupled with total apathy towards the violation of the fundamental right guaranteed under Article 21 would clearly constitute a "constitutional tort". The concept was explained by the Supreme Court in ***MCD v. Uphaar Tragedy Victims Assn.*** reported in **(2011) 14 SCC 481,** wherein it was observed that constitutional courts can, in appropriate cases of serious violation of life and liberty of the individuals, award punitive damages, when an intentional doing of some wrongful act by the State was established. Ignoring the law, and passing detention orders that only beg to be set aside when challenged before this Court under Article 226 demonstrates a clear and wilful refusal of the State to follow the law. This is, therefore, a clear case of conscious abuse of statutory power. It must follow that an irrepressible urge to use preventive detention must be now be sternly dealt with by imposing punitive damages on the State. In ***Rudul Sah* v. *State of Bihar*** **[(1983) 4 SCC 141]**, the Supreme Court has pointed out that such compensation is a palliative for the unlawful acts of instrumentalities of the State ostensibly acting in the name of public interest and which present, for their protection, the powers of the State as a shield. We, therefore, hold that, while quashing preventive detention orders, if the Court finds that the detention was wholly frivolous or was based on non-existent or irrelevant grounds, the consequence would be that the State would be mulcted with punitive damages for depriving the liberty of the subject, without any lawful justification.

27. At this juncture, it is necessary to call the attention of the State to the following observations of the Supreme Court in ***State of Punjab v. Jagdev Singh Talwandi*** reported in **(1984) 1 SCC 596:**

"This Court has observed in numerous cases that, while passing orders of detention, great care must be brought to bear on their task by the detaining authorities. Preventive detention is a necessary evil but essentially an evil. Therefore, deprivation of personal liberty, if at all, has to be on the strict terms of the Constitution. Nothing less. We will utter the oft-given warning yet once more in the hope that the voice of reason will be heard."

H.C.P(MD) No. 1710 of 2022:

28. The petitioner is the wife of the detenu viz., Jeyaraman, S/o.Kanagamani, aged about 58 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.85 of 2022 dated 19.09.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

29. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

30. The main ground that was urged by the learned counsel for the petitioner is that this is a text book case where the preventive detention law has been misused by the respondents. The learned counsel submitted that the detenu was agitating against land acquisition proceedings initiated for Tirumangalam–Rajapalayam–Senkottai National Highway and several peaceful protests were conducted demanding to choose an alternative route for the proposed four lane project. Initially, a case was registered in the year 2018 as if the detenu and his associates abused the Special Thasildar in filthy language and prevented him from discharging his official duties. Thereafter, the ground case was registered in Crime No.274 of 2022, as if the petitioner threatened, abused and attacked the Village Assistant, who was asking the land owners to appear for enquiry. Both these cases were taken as a ground to pass the detention order and according to the learned counsel for the petitioner, even the minimum ingredient of the detenu causing disturbance to public order or that the detenu was a habitual offender has not been satisfied in the present case.

31. Per contra, the learned Additional Public Prosecutor submitted that the illegal act of the detenu clearly amounted to causing disturbance to public order since the detenu was repeatedly not allowing the officials to perform their official duty. It was further submitted that all the requirements have been fulfilled in this case and it is not left open to the detenu to canvas this case on merits and the detention order can be interfered only if the same is in violation of the procedure provided under Act 14 of 1982 or if there is any infraction of the fundamental rights guaranteed under Constitution of India.

32. We have carefully considered the submissions made on either side.

33. The adverse case that has been pointed out against the detenu has been explained in the detention order in the following manner:

"On 26.12.2016 at 13.30 hours, while the complainant Vengadesh, Special Thasildar (Land Acquisition), Sivagiri, was on survey work at plot No. 1060 Canal outcropping land in Narnapuram village, Thiru.Jeyaraman and his associates swore at the complainant in filthy language and prevented him from discharging his official duty. The charge sheet was filed on

01.07.2019 and the case is pending trial before the Judicial Magistrate, Sivagiri under Crime No.177/2020."

34. The ground case against the detenu has been explained in the detention order in the following manner,

"On 14.09.2022 at 14.50 hours, at Jasper complex at Dharani Nnagar in Vasudevanallur, while the complainant Karunalayapandian, Village Assistant, Part-1 Naranapuarm was informed that Thiru.Jeyaraman to take necessary documents regarding land acquisition and appear. Thiru.Jeyaraman was closing his office door and swore at the complainant in filthy language saying, "cd;id bfhy;yhky; tplkhl;nld;" and prevented him from discharging his official duty and assaulted him on his face and forehead with his hand and threatened him, saying "jiyahhp vd;why;. eP v';FdhYk; te;JtpLthah. cd;id fz;l Jz;lkhf btl;o bfhd;WtpLntd;lh/" The complainant shouted with fear. On hearing the voice of the complainant, the people who were working in the office, came running and opened the door. Thiru.Jeyaraman swore at the complainant in filthy language and threatening him saying ",t';bfy;yhk; tug;ngha; jg;gpj;Jtpl;lha;. vd;idf;FdhYk; cd;id bgl;nuhy; Cw;wp bfhGj;jhky; tplkhl;nld;" and assaulted the complainant and took his cell phone. On the complaint of Karunalayapandian, a case in Vasudevanallur Police Station Crime Number. 274/2022 under Sections 294(b), 342, 353, 332, 379, 506(ii) Indian Penal Code was registered. This case is under investigation."

35. A careful reading of the ground case shows that this incident did not happen in a public place. Even in the petition filed before the Judicial Magistrate, Sivagiri seeking for the remand of the detenu, it is sufficiently clear that the incident had taken place inside a closed room. If such an incident had really taken place, it defies reason as to how it could have caused a disturbance in the public order. To constitute a disturbance to the public order, the incident must have the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order. This Court fails to understand as to how an incident which took place within four walls can have this propensity. There is absolutely no material to show that the reported incident in this case had such a great potential so as to disturb the even tempo of life in the locality or disturb the general peace and tranquillity or create a sense of alarm and insecurity in the locality.

36. Even though the learned Additional Public Prosecutor impressed upon this Court to take note of the judgment of the Apex Court in ***The Commissioner of Police and Ors. vs. C.Anita*** reported in **(2004) 7 SCC 467** and ***Subramanian vs. State of Tamil Nadu and Ors.*** reported in **(2012) 4 SCC 699**, on carefully going through these judgments, it is seen that an act by itself, howsoever grave it is, cannot assume the character of affecting the public order unless it has the potentiality of impacting the society at large. It is true that this Court cannot substitute its own opinion for that of the detaining authority. However, the materials placed before this Court must *prima facie* satisfy that the act committed by the detenu amounted to affecting the public order and the said test has not been satisfied in the present case.

37. This is a case where the detenu seems to be indulging in agitations opposing land acquisition. The first incident is said to have taken place in the year 2018. A reading of the adverse case shows that such an agitation was made in front of the Special Thasildar while undertaking the survey. The second incident has taken place after nearly four years in 2022 and admittedly, this incident had not taken place in public. The entire incident had taken place inside a room and even assuming that the allegations made against the detenu is taken to be true, at the best, it can only be construed to constitute individual offence by the detenu as against a public officer.

38. The prelude to this order which clearly demonstrates as to how preventive detention laws are misused in the State of Tamil Nadu is once again reaffirmed through the facts of the present case. The officials seem to be under the impression that if anyone questions them or indulge in raising a protest, the same can be shut down by invoking Act 14 of 1982. Such a mindset goes against the very purpose for which preventive detention laws are enacted and such casual invocation of preventive detention laws will directly result in the infraction of Article 21 of Constitution of India.

39. In view of the above discussion, this Court has absolutely no hesitation in holding that the impugned detention order suffers from infirmity and illegality warranting the interference of this Court.

40. As indicated in the prelude to this order, it is high time that this Court starts imposing compensation on the State whenever this Court interferes with the detention order, in deserving cases. The learned Additional Public Prosecutor opposes imposition of compensation by pointing out to Section 16 of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, ForestOffenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexualoffenders, Slum-Grabbers and Video Pirates Act, 1982. This submission made by the learned Additional Public Prosecutor does not hold water since the protection is given under the said provision as against imposing personal liability for action taken in good faith. However, compensation can be imposed in cases of this nature whenever this Court finds that there is an infraction of Article 21 of Constitution of India. To substantiate the same, the judgment of the Apex Court in ***D.K.Basu vs. State of West Bengal*** reported in **(1997) 1 SCC 416** will be of relevance. The Apex Court made it very clear that whenever there is infringement of the indefeasible rights guaranteed under Article 21 of Constitution of India, this Court has the power and jurisdiction under Article 226 of Constitution of India to impose compensation and to protect the fundamental rights of the citizen. This has to be done in cases where the Courts find that there has been misuse of the preventive detention law against a detenu who could have been proceeded against under the available penal laws.

41. In the result,

(i) H.C.P(MD)No.1710 of 2022 is allowed and the order of detention in M.H.S.Confdl.No.85 of 2022 dated 19.09.2022, passed by the second respondent is set aside. The detenu, viz. Jeyaraman, S/o.Kanagamani, aged about 58 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(ii) There shall be a direction to the first respondent to pay a sum of Rs.25,000/- as compensation to the detenu for having violated his right guaranteed under Article 21 of Constitution of India. This compensation shall be paid within a period of four weeks from the date of receipt of a copy of this order. **H.C.P(MD) No.1206 of 2022:**

42. The petitioner is the mother of the detenu viz., Soundarrajan, S/o.Karuppasamy, aged about 27 years. The detenu has been detained by the second respondent by his order in holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

43. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

44. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner focussed his argument on the ground, wherein, the detaining authority has taken into consideration the fact that the accused, who are similarly placed, have been granted bail by the competent Court.

45. The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot *ipso facto* satisfy himself regarding the imminent possibility of the detenu coming out on bail, merely on the ground that the accused, who are similarly placed have been granted bail.

46. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Rekha v. State of Tamil Nadu ((2011) 5 SCC 244)*** to substantiate his submission.

47. The learned counsel appearing for the petitioner submitted that the adverse case against the detenu was for alleged offence under Sections 294(b), 324 and 506(ii) IPC registered in Crime No.42 of 2018 and the ground case is of the year 2022, whereby the detenu is said to have slapped the constable and had bitten the middle finger of the constable and spit it on the ground, when he was questioned while causing disturbance to a function that was going on. The learned counsel submitted that even if both these incidents are taken to be true, the same does not result in any disturbance to public order.

48. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority had taken note of the fact that the bail petition filed in the ground case was dismissed by the learned Magistrate and the further bail petition filed before the Sessions Judge was pending and by placing reliance upon the order passed in Cr.M.P.No.1612 of 2018 had come to a conclusion that it is a similar case where bail was granted and hence there is a likelihood of the detenu being released on bail. The learned counsel submitted that the order that was relied upon was not a similar case and the detention order suffers from non application of mind.

49. Per contra, the learned Additional Public Prosecutor placing reliance upon the judgment of the Apex Court in ***The Commissioner of Police and Ors. vs. C.Anita*** reported in **(2004) 7 SCC 467** and ***Subramanian vs. State of Tamil Nadu and Ors.*** reported in **(2012) 4 SCC 699**, submitted that even a single incident could be considered to cause disturbance to public order if the same is prejudicial in maintaining peace and tranquillity or creates a terror to the general public. According to the learned Additional Public Prosecutor, the act of the detenu in attacking the constable had this effect. The learned Additional Public Prosecutor further submitted that the detention order is sufficiently supported by materials and the detaining authority has applied his mind and there is absolutely no ground to interfere with the detention order.

50. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

51. On carefully going through the detention order, it is seen that the adverse case was registered in Crime No.42 of 2018 for offence under Sections 294(b), 324 and 506(ii) IPC. That was a case where the detenu is said to have attacked the complainant and his parents for having been questioned for erecting a fence in the land belonging to the complainant.

52. The ground case pertained to an attack made on the Head Constable. Obviously, the detenu was possessed with 'spirit' that is copiously supplied by the State and he was not in his senses. The detenu was seen shouting and dancing before a drama stage and when this was questioned, he is said to have scolded in filthy language and attacked the constable and had bitten the middle finger of the constable and severed it. Without any hesitation, we hasten to add that this is not a condonable act and this is an act which deserves maximum punishment. The only question is as to whether this act on the part of the detenu will disturb the even tempo or the normal life of the community in the locality or it will disturb the general peace and tranquillity or it will create a sense of alarm or insecurity in the locality. This Court is constrained to hold that the detestable act of the detenu does not satisfy any of these requirements and by no stretch, the act of the detenu will lead to causing disturbance to the public order. This is an act which can be easily dealt with the available penal laws and it is not necessary to invoke Act 14 of 1982 to deal with the detenu. Just because the detenu indulged in a horrendous act against the police official, that by itself is not a ground to invoke detention laws.

53. The detaining authority has taken note of the order passed in Cr.M.P.No.1612 of 2018 to come to a conclusion that there is likelihood of the detenu being let out on bail. On carefully going through the order passed in Cr.M.P.No.1612 of 2018, it is seen that the accused therein had trespassed into the shop belonging to the complainant and had attacked him and there are also previous cases pending against him. The Sessions Court took into consideration the fact that the accused had suffered incarceration for nearly 68 days and the investigation was almost complete and under such circumstances, the accused was released on bail. We do not understand as to how this order is considered to be a similar case with the facts of the present case. The detaining authority had to rely upon some order to come to a conclusion that a detenu will be released on bail and such order must be similar to the facts of the case on hand. Such bail orders are mechanically relied upon by the detaining authorities as mentioned in the prelude in this order and this is yet another case which falls in that category. It is therefore clear that there is total non-application of mind on the part of the detaining authority.

54. The issue that has been raised by the learned counsel for the petitioner is no longer *res integra* and it is covered by the judgment that has been cited by the learned counsel for the petitioner, which has been referred supra.

55. The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

56. In the result, H.C.P(MD)No.1206 of 2022 is allowed and the order of detention in Detention Order No.54 of 2022 dated 23.06.2022, passed by the second respondent is set aside. The detenu, viz. Soundarrajan, S/o.Karuppasamy, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

57. Before drawing the curtains, we wish to make it very clear that this is not a fault finding mission. If we are to find fault with the State and the Executive, unwittingly this Court has also been dragged into the vicious cycle and the above statistics reveal that by the time we take up the HCP case for final hearing, a minimum of six months detention gets over and thereafter, we complete the formality of invariably setting aside the detention orders. Therefore, all the institutions must wake up to the reality and must cross the comfort zone. Many a times, an exercise which causes embarrassment to an institution, actually acts as the catalyst for evolution which results in improving the standards of criminal justice system. This Court hopes that the State and the Executive takes this order seriously, since this Court has indicated that in cases where the detention is found to be illegal, cost will be imposed against the State in each case.