BEFORE THE MADURAL BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Pronounced on : 11.04.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.1389 of 2022

Susamma Baby .. Petitioner / Wife of the Detenu

Vs.

1.The State rep., by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

3.The Superintendent,
Central Prison,
Madurai.

4. The Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the records relating to the

impugned Detention Order made in Cr.M.P.No.29/2022 dated 09.07.2022 on the file of the District Magistrate and District Collector, Virudhunagar Ditrict, the 2nd respondent herein, branding the petitioner's husband/detenu by name, Josephraja, son of Joseph Chellappa, aged 49 years as "Sexual Offender", who is now confined at Central Prison. Madurai and quash the same and set him at liberty by producing him before this Court.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **K.K.RAMAKRISHNAN, J]**

This Habeas Corpus Petition is filed by the wife of the detenu Josephraja. He is the accused in Crime No.9 of 2022 on the file of the Inspector of Police, All Women Police Station, Rajapalayam. The detenu/Josephraja is the Pastor in the King of King Church situated at North Malayandipatti. The victim is the physically challenged and partially mentally retarded 17 years old girl. On 03.05.2022 at 09.00 p.m, the detenu committed penetrative sexual assault upon the detenu in the

said Church premises. So, the respondent police registered the case under Sections 5(k) 5(f) r/w 6 of POCSO Act, 2012. Thereafter, the detaining authority slapped the impugned detention order by branding the detenu as "Sexual Offender" under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982, (hereinafter referred to as "the Tamilnadu Act 14 of 1982"). Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. The learned counsel for the petitioner argued on the following grounds:

2.1. The learned counsel for the petitioner submitted that the occurrence took place on 03.05.2022 and the detaining authority passed the detention order on 09.07.2022 and hence the delay in passing the detention order is vitiated the proceedings.

2.2. The detention order passed only on the solitary case of the POCSO offence and hence without any habituality, invocation of the Tamilnadu Act 14 of 1982 is vitiated and further, he placed reliance of

the judgment reported in **2006 (2) MLJ (Crl) 374(SC)** and emphasised that without habituality, the invocation of the Tamilnadu Act 14 of 1982 on the basis of the single transaction is not legally valid.

2.3. There was no bail petition pending on the date of passing of detention order and hence, the subjective satisfaction arrived by the detaining authority, recording that there was imminent possibility of the detenu coming out on bail, is not in accordance with law.

2.4. The similar case particulars furnished by the detaining authority is not similar in nature and hence there was no application of mind on the part of the detaining authority in passing the detention order and he seeks for quashing of the detention order.

2.5. The learned counsel further submitted that AR copy filed in the booklet is not clear and hence, the same affected the right of the detenu from making effective representation.

2.6. There was delay in considering the representation and the same was not properly explained and hence, there is infraction of Article 22 of the Constitution of India.

3. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor submitted that there was no period fixed for invoking the detention order either in the Constitution of India or in the Tamilnadu Act 14 of 1982. Further, he submitted that the Sponsoring Authority has collected all the relevant documents from various sources and submitted to the Detaining Authority and in the said process, the above period of 45 days accrued in passing detention order did not amount to undue and intentional delay. The consideration of the pendency of bail petition to arrive the subjective satisfaction is not necessary. Even without considering the said pendency, the authority might arrive the conclusion considering the imminent possibility of coming out on bail on the facts of each case. More particularly, in this case, the statutory period for obtaining the bail is ahead and hence the detaining authority with satisfaction of all relevant materials, passed the detention order. The illegible AR copy is not a relied document and hence, the detenu's plea of affecting his right to make representation upon perusal of AR copy is without substance. The argument of the learned counsel for the petitioner that the authority has no jurisdiction to invoke the jurisdiction of the Act on the solitary case cannot be accepted, since the definition under

"Sexual Offender" did not demand the habituality, even propensity of the single incident justifies the invocation of the preventive detention Act. More particularly, in this case, Pastor has committed the penetrative sexual assault upon the partially mentally retarded and physically challenged minor victim girl in the Church premises which create panic in the mind of the people. He further submitted that there was no delay in considering the representation and the said representation was properly considered by the authorities and hence, he prayed for dismissal of this Habeas Corpus Petition.

4. This Court has considered the rival submissions made by both side and perused the documents adduced by them and also considered the precedent cited by both side.

5. Delay in passing the Detention Order:

As pointed out by the learned Additional Public Prosecutor, neither in the Constitution nor in the Act 14 of 1982, there is no time limit fixed to invoke the detention order. Even after released on bail, detention order

can be passed. In this aspect, the law laid down by the Hon'ble Supreme Court from the following judgment is as follows:

5.1. T.A. Abdul Rahman v. State of Kerala, reported in 1989(4) SCC741:

> *"There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this Court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention."*
>
> *7. In Hemlata Kantilal Shah v. State of Maharashtra [(1981)4 SCC 647.*
>
> *"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."*

5.2. In **Yogendra Murari v. State of U.P [(1988) 4 SCC 559],** Hon'ble Supreme Court has reiterated the earlier view consistently taken and held as follows:

> *"It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention."*

5.3. The Hon'ble Supreme Court in **Rajendrakumar Natvariat Shah v. State of Gujarat,** reported in **AIR 1988 SC 1255** has held as follows:

> *"10.Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a*

serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention"

5.4. 2020 SCC Online Mad 17237 [P.Suganthi v. State of Tamilnadu rep., by the Additional Chief Secretary to Government and Others].

"26. It is to be noted that the Honourable Apex Court, in the decisions cited by the learned counsel for the petitioners as well as the learned Additional Public Prosecutor, has consistently held that the issue of delay is to be decided on case to case basis. Considering the facts of this case and taking note of the principles of law laid down in the decisions referred supra, we opine that the petitioners have not made out a case to quash the impugned order on the ground of delay."

6. From the above law enunciated, it is clear that the delay in passing the detention order from the date of arrest is not *ipso facto* to quash the detention order when the explanation on the side of the detaining authority is acceptable and the delay is reasonable one. The learned Additional Public Prosecutor submitted that the detenu was arrested in this case on 11.05.2022 and medical examination of the victim girl was conducted and her 164 Cr.P.C, statement also recorded only on 15.06.2022 and the Sponsoring Authority, thereafter collected the entire materials and submitted his sponsoring affidavit on 04.07.2022 and thereafter, the detaining authority passed the detention order on 09.07.2022. Thus, the delay is well explained. The said delay, according to this Court, is bonafide, when the requirement to invoke the detention order against the detenu by branding him as "Sexual Offender" is necessary in view of keeping the public order, more particularly, the allegation against the detenu/Pastor that he is said to have committed the penetrative sexual assault in Church premises.

7. So, the contention of the learned counsel for the petitioner that, there was delay in passing the detention order, is not acceptable on the

facts of this case by applying the principle laid down by the Hon'ble Supreme Court in the judgments cited supra. In view of the above principle, that delay in passing the detention order will be decided on the facts of each case. The reliance placed by the learned counsel for the petitioner in the judgements reported in ***AIR1974SC2353, 2008(1)TLNJ65(Cri) and 2019(1)MWN(Cri)-602*** is not applicable to the facts of the case on hand, on account of the explanation furnished by the learned Additional Public Prosecutor, which is accepted by this Court on the facts and circumstances of the present case, when panic in the mind of the people in the vicinity of the Church and surrounding places arose due to the propensity of the act of penetrative sexual assault committed by the detenu in the Church premises is still remains and does not vanish.

8. Similar case particulars:

The contention of the learned counsel for the petitioner that the detaining authority did not apply its mind to quote the similar case bail order which is not similar in nature, is not factually or legally correct. The POCSO offence in the similar case is similar to the offence in the

present case and hence, the detaining authority is very well placed the application of mind to the said bail order. Looking from the another angle, this Court already dealt the "similar case" and "same case" in MANU/TN/1338/2014 ***Mariappan v. The District Collector and District Magistrate, Tirunelveli,*** clearly held that the requirement of the **Rekha** case to furnish the "similar case particulars" cannot be confused with "same case particulars" by the following finding:

> *"71. While considering reasonableness of the detaining authority to arrive at the subjective satisfaction on the aspect of bail, we are of the view that the detaining authority can apply only rule of logic and reasonableness..*
>
> *72. Though the detaining authority has used the expression, "similar cases", the court is conscious of the fact that there cannot be similarity or same set of facts. Similar cases, therefore in the humble opinion of this court, should be meant. 'similar offences', and it cannot be expected to have the same set of facts, with same overt acts against the accused involved."*

9. Non-serving of legible AR copy:

The AR copy is neither relied document nor necessary document for the detenu to submit the representation before the competent authority. The purpose of preparation of AR copy is discussed by the

Hon'ble Supreme Court as well as this Court in the manner as follows:

9.1. 2007 (1) MLJ (Crl) 321 [Annamalai v. State by Sub Inspector of Police, Thiruppathur Police Station]:

> *"19. The Madras Medical Code (Vol.1) Section 10 paragraph-622 gives guidelines or instructions to the doctor as to how the columns in wound certificate are to be filled up. Para-622 (vi) reads: "Medical officer should ascertain and incorporate in the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time." The Medical Officer should ascertain the cause of the injury, weapon used, time, etc. thereby showing no power is vested upon the Medical Officer, to ascertain from the injured or the person accompanied the injured, who is the cause for the assault, whether it is known or unknown even. The doctor is concerned, to ascertain and incorporate in the certificate, how the injuries were inflicted and what is the weapon used. including the time, so as to find out, at later point of time, whether the injury would have been caused by the weapon produced on behalf of the prosecution said to have been used by the assailants on the basis of the recovery, if any. In this view, if the doctor had incorporated about the statement made by the person who brought the deceased, that can be ignored, which appears to be the dictum of the Apex Court also in Basheer v. State 1993 (Crl LJ. 2173). Even though the doctor PW.7 is not expected to record such statement of PW2 about the accused and the occurrence, the evidence of PW7 proves that she examined the deceased and found injuries on her head and neck Further, it is a procedural irregularity and the accused cannot seek aid of the same when his guilt has been proved by ocular testimony of PW2."*

In view of the above law, the above said document is not relied document and the same has no impact on the trial itself. Hence, non-serving of the legible AR copy has no impact in passing the detention order.

10. No bail petition pending:

The detaining authority arrived the conclusion on the premise that the detenue has a chance to file the bail application and in all possibility, he would come out on bail in near future by filing bail petition. The preventive detention jurisdiction is suspicion jurisdiction and the authority is only required to act on suspicion and reasonability. In this case, the detaining authority passed the impugned detention order on the notion that the detenue would file bail petition in near future and likely to come out on bail. If he comes out on bail, he would act prejudicial to the public order. The similar contention was raised earlier before this Court in H.C.P(MD)No.15 of 2013 and this Court accepted the said plea and the same was reversed by the Hon'ble Supreme Court in the case of **State of Tamilnadu and another v. Nabila and another,** reported in **(2015) 12 SCC 127** and the Hon'ble Supreme Court held that the satisfaction of the detaining authority that the detenu would come out on bail on filing the

bail petition in future, without pendency of the bail petition is within the four corners of the Act. The relevant paragraph is as follows:

> *"Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The word likely to be released' connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word 'likely' shows it can be either way."*

10.1. Similarly, in the case of **Senthamilselvi vs. State of Tamil Nadu and Ors.** reported in **(2006)5 SCC 676,** the Hon'ble Supreme Court has held as under:

> *"10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be Ipse Dixit of the detaining authority On the basis of materials before. him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is*

not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement [emphasis supplied]"

10.2. The above interpretation is only to achieve the purpose of the preventive detention Act and the said jurisdiction is suspicion jurisdiction and hence the detaining authority acted on the ground reality on the materials produced before him that the detenues would file the bail application in future. In this aspect, it is relevant to rely the judgment passed in **Hare Ram Pandey vs. State of Bihar and Ors.** reported in **2004 (3) SCC 289,** by the Hon'ble Supreme Court to emphasis the object of the preventive detention law:

"6. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings The object of the law of preventive detention is not punitive, but only preventive. It is resorted to when the Executive is convinced that such detention. is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary the matter has necessarily

to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority therefore, is a purely subjective affair. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would loose all their meanings are the true justification for the laws of prevention detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdiction for the law enabling prevention detention. But the actual manner of administration of

the law of preventive detention is of utmost importance. The law has to be Justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other"

11. Delay in considering the representation:

According to the learned Additional Public Prosecutor, the petitioner's representation dated 19.07.2022 was received on 22.07.2022 and the same was considered and disposed on 25.07.2022 by transmitting the file to the various departments. There are two intervening Government Holidays, namely, 23.07.2022 and 24.07.2022 and hence, there is no delay in considering the representation. Accordingly, this ground also, the petitioner did not make out any case to quash the proceedings.

12.1. Solitary Incident:

The submission of the learned counsel for the petitioner that under the Tamilnadu Act 14 of 1982, the detaining authority has no jurisdiction to invoke the provisions for the solitary incident and more particularly, the said act of the detenu did not have much impact on the society to the

extent of causing disturbance to the public order, is not accepted and the reliance placed on the judgment of the Hon'ble Supreme Court in **2006(2) MLJ Crl 374** which demands the 'habituality' is misconceived one and the same was relating to 'Goonda' and not relating to the 'Sexual Offender'. Even the said provision relating to Goonda, the word "habitual' is deleted by the statutory amendment in the year 2014 itself. So, even for 'Goonda', as on the date of the detention order, there is no embarkment to invoke the Tamilnadu Act 14 of 1982. As per the definition of 'Sexual Offender', there is no requirement of multiple incident to invoke the provision of the Tamilnadu Act 14 of 1982. It is relevant to extract the following portion of the Act:

Before Amendment 2014	After Amendment
f) "goonda" means a person who either by himself or as a member of or leader of a gang, ***"habitually"*** commits, or attempts to commit or abets the commission of offences	(f) "goonda" means a person who either by himself or as a member of or leader of a gang ..... commits, or abets the commission of offences .....

12.2. 'Sexual Offender' definition:

"2(ggg) "sexual-offender" means a person who commits or attempts to commit or abets the commission of any offence punishable under

sections 354, 376, 376-A, 376-B, 376-C, 376-D or 377 of the Indian Penal Code (Central Act XLV of 1860) or the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Tamil Nadu Act of 44 of 1998) or the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012);"

12.3. In this case, the detenu is a Pastor and his responsibility towards the entire public is placed on the high pedestrian than the ordinary man. He is dutybound to take care of every member of the Church without any greed of sex. But, it is alleged that he has committed offence under the POCSO Act, more particularly, he is alleged to be committed the penetrative sexual assault on the partially mentally retarded and physically challenged minor victim girl. So, the said act of the Pastor/detenu created panic in the locality and also the mind of the persons attending the prayer along with their female children. In this aspect, it is relevant to extract the meaning of 'panic' as coined by the Hon'ble Supreme Court in the case of **Ramesh Roy v. State of West Bengal (1972)3 SCC 829)]:**

"(PANIC) is a state of mind or reaction to fearsome or gruesome events or even creating unreasoning or hysterical fear often spreading quickly. It is the effect, the cause being due to many situation. What

creates panic as also create terror depending upon the acts with which a person is confronted."

12.4. So, as on date, the word "habitually" was removed in the Amendment Act and hence the detaining authority has invoked the Tamilnadu Act 14 of 1982 based on the propensity of the offence in the solitary cases.

12.5. Even before the amendment, the Hon'ble Supreme Court in number cases clearly stated that even in the solitary case, the detention order can be passed. Which was required is that the propensity of the act alone is enough to invoke the detention order.

12.5.1. Hon'ble Constitution Bench of the Supreme Court consists of 9 Hon'ble **Judges held in 1994 (5) SCC 54 Attorney General for India and Others v. Amratlal Prajivandas and Others** as follows:-

"Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining. the person. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. If,

however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention."

12.5.2. The Hon'ble Supreme Court in **1992 (4) SCC 154 [David Patrick Ward and Others v. Union of India and Others]** has held as follows:

"*The detaining authority can base its order of detention even on a solitary act provided that the conduct of the person concerned with the act in the circumstances in which it was committed, is of such a nature as would enable the formation of requisite. satisfaction that the person, if not prevented by an order of detention, is likely to indulge in repetition of similar acts in future."*

12.5.3. The Hon'ble Supreme Court in **1974 (4) SCC 514 [Anil Dey v. State of West Bengal]** has held as follows:**:**

"This single act cannot live in isolation and necessarily connotes course of previous conduct whereby some specialization has been acquired, some specialised agencies have been fabricated and some special mischief has keen planned to be perpetrated. All that has been done in the affidavit in opposition is to set out more fully what in thus capsuled in the seemingly single act communicated.

To abridge is not always to omit.

8. We may illustrate our point in and different way. If a scientist is complimented for the act of discovering the laser ray, if necessarily implies not a single act but a long course of activity in the laboratory in ceaseless effort to develop this great scientific marvel. No one can reasonably say that when a Nobel prize winner is complimented for the act of splitting the atom we are wrong in reading into that act a tremendous and intense striving and technological equipment by the scientist. Like-WISH, the very proficiency and daring displaced by the petitioner, with his associates, in doing what he did, amounts to the attribution of a series of activities more fully put down in para 8 of the District Magistrate's affidavit. We agree that this expansive interpretation is permissible only in exceptionally plain cases. It follows that there is hardly any substance in the contention of in sufficient communication or illegitimate reliance on materials".

12.5.4. The Hon'ble Supreme Court in **1991 (1) SCC 144 IM.Mohamed Sulthan v. Joint Secretary to Govt. of India, Finance Dept. and Others]** has held as follows:

"An order for preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts as to

warrant his detention."

12.5.5. The Hon'ble Supreme Court in **1992 (1) SCC 1 [Abdul Sathar Ibrahim Manik v. Union of India and Others]** has held as follows:

> *"Even a solitary incident which has been detected may speak volumes about the potentialities of the detenu and merely on the ground that there were no antecedents the detention order cannot be quashed. The authorities cannot and may not in every case salvage the antecedents but as noted above even a solitary incident may manifest the potentialities of a detenu in the activities of smuggling."*

12.5.6. The Hon'ble Supreme Court in the case of **Alijan Mian v. Distt. Magistrate (3 judges Bench),** reported in **1983 (4) SCC 301,** in paragraph No.14 states that "*even one incident may be sufficient to satisfy the detaining authority and it all depends upon the nature of offence in various similar cases."*

12.5.7. Hon'ble Full Bench of this Court in **Arumugam v. State of Tamil Nadu,** reported in **2011 SCC OnLine Mad 786**, even before the

amendment in the year 2014 to delete the word 'habitually', held as follows:

> *"26.(ii)..... Out of all the cases against him even if a single incident resulting in a single case has the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order that by itself would be sufficient to pass a valid order of detention."*

13. From the above, the argument of the learned counsel for the petitioner that the detaining authority has no jurisdiction to invoke the provision of the Act 14 of 1982 in the case of the solitary incident, cannot be countenanced. The act of committing penetrative sexual assault upon the partially mentally retarded and physically challenged minor victim girl in the premises of Church itself has its own propensity to demand the invocation of the Tamilnadu Act 14 of 1982 against the detenu.

14. The facts of this case, as revealed by the detaining authority in the detention order and connected materials, shocked the judicial conscience, how the insatiable lust for sex of the detenu leads to the indulging of penetrative sexual assault on the partially mentally retarded

and physically challenged minor victim girl, as a treasury guard become a robber. So, the detaining authority rightly passed the detention order against the detenu as a radical treatment as held by the Hon'ble Constitution Bench of the Supreme Court consists of 9 Hon'ble Judges in **1994 (5) SCC 54 [Attorney General for India and Others v Amratlal Prajivandas and Others]:**

> *"May be this is a case where a dangerous disease requires a radical treatment. Bitter medicine is not bad medicine. In law it is not possible to say that the definition is arbitrary or is couched in unreasonably wide terms.*

15. In the result, this Habeas Corpus Petition is dismissed.

[R.S.K.,J.] & [K.K.R.K., J.]
11.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

PJL

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-9.

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

3.The Superintendent,
Central Prison,
Madurai.

4. The Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.

PJL

Pre delivery Order made in
H.C.P.(MD)No.1389 of 2022

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