IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.05.2012

Coram

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Habeas Corpus Petition No.571 of 2012

D.Vijayakumari ... Petitioner

Vs

1.State of Tamilnadu, rep. by its
Secretary to Government,
Prohibition and Excise Department
Fort. St. George, Chennai-600 009.

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

Prayer: PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records related to the Petitioner's husband's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 16.9.2011 on the file of the Second Respondent herein made in proceeding No.303/BDFGISSV/2011, quash the same as illegal and consequently direct the respondents herein to produce the detenu K.Dhanasekaran, Son of Mr.Karuppathevar, before this Hon'ble Court and set the detenu at liberty, who is now detained in Central Prison, Vellore.

For Petitioner : Mr.Amarendra Sharan
Senior Counsel
for Mr.R.Vivekananthan

For Respondents : Mr.I.Subramani, Public Prosecutor
Assisted by Mr.Ananda Krishnan,
Government Advocate

ORDER

M.VENUGOPAL,J.

The Petitioner (wife of the detenu) has filed this Writ of Habeas Corpus Petition praying for issuance of a direction to call for the entire records related to her husband-K.Dhanasekaran's detention under Tamil Nadu Act 14 of 1982 as per detention order, dated 16.9.2011 on the file of the 2nd Respondent made in Proceeding No.303/BDFGISSV/ 2011 and to quash the same as illegal.

2.The Petitioner's husband K.Dhanasekaran has been detained under Tamil Nadu Act 14 of 1982 as a 'Slum Grabber' as per detention order dated 16.09.2011 on the file of the 2nd Respondent in Proceedings No. 303/ BDFGISSV/2011, because of the ground cases mentioned in para 3 of the grounds of detention. According to the Petitioner, the Detaining Authority has relied upon 6 cases while passing the detention order.

3.The Petitioner earlier filed H.C.P.No.1498 of 2011 to produce her husband K.Dhanasekaran before this Court and to set him at liberty from detention. This Court has dismissed the H.C.P.No.1498 of 2011 on 22.02.2011. While dismissing the H.C.P.No.1498 of 2011, this Court at para 5 & 67 has observed hereunder:

> "5.Mr.N.R.Ilango, learned Senior Counsel appearing on behalf of Mr.Vivekanandan, learned counsel for the petitioner submitted that though several grounds have been raised in the above petition, he is confining himself to the following submissions : .....
>
> 67. As already pointed out, except the aforesaid submissions, no other submission has been made by the learned senior counsel for the petitioner. Therefore, for the aforesaid reasons, we do not find any reason to interfere with the order of detention passed by the Detaining Authority / the second respondent herein. Accordingly, the above Habeas Corpus Petition fails and the same is dismissed."

4.The Learned Senior Counsel for the Petitioner submits that the 2nd Respondent passed the impugned order of detention dated 16.09.2011 without application of mind, as the ground case incident could have been dealt with under ordinary law of the land and there is no

necessity to invoke the provisions of the preventive detention.

5.The Learned Senior Counsel for the Petitioner submits that in para 4 of the grounds of detention, it is mentioned by the Petitioner that her husband moved the bail application before the XVII Metropolitan Magistrate Court, Saidapet in Crl.M.P.No.4621 of 2011 registered in Crime No.25 of 2010 on the file of R-8, Vadapalani Police Station and the same has been dismissed on 08.09.2011. Further, another bail application in Crl.M.P.No.4205 of 2011 has been filed by her husband before the Chief Metropolitan Magistrate Court, Chennai in connection with Crime No.25 of 2010 on the file of R-8, Vadapalani Police Station and the same is pending. Also, her husband filed anticipatory bail petition in Crl.O.P.No.18511 of 2011 in Crime No.880 of 2011 on the file of R-10 MGR Nagar Police Station and the same is also pending. Another anticipatory bail application has been moved by her husband in Crime No.1107 of 2011 on the file of R-7 K.K.Nagar Police Station before the Principal Sessions Court, Chennai and the same was dismissed on 15.09.2011. Her husband also moved another bail application before the XXIII Metropolitan Magistrate, Saidapet, Chennai in Crime No.9518 of 2011 and the same is pending. Because of the above factors, the Detaining Authority's conclusion that there is a real possibility of detenu coming out on bail is without any cogent material and therefore, the detention order is liable to be set aside.

6.The Learned Senior Counsel for the Petitioner urges before this Court that the Detaining Authority has not at all considered even the remote possibility of release of the detenu viz., Petitioner's husband on bail in Crime No.1107 of 2011 of R-7 K.K. Nagar Police Station which is under most serious Sections of I.P.C. of the three cases and further, the non consideration of the Detaining Authority of the possibility of release of the detenu on bail in a case involving graver offence amounts to non application of mind which results vitiating the order of detention dated 16.09.2011.

7.To lend support to the contention that the order of detention dated 16.09.2011 is liable to be set aside, the Learned Senior Counsel for the Petitioner cites the Division Bench decision of this Court in Martyn V. The District Collector and the District Magistrate, Thiruvallur District at Thiruvallur and another [2009 (3) MWN (Cr.) 275], at page 277 in paragraph 6, it is observed as follows:

> "6.We have heard the counsel appearing for both sides and perused the materials produced before us. As rightly contended by the learned counsel for the Petitioner, as apparent from para 5(i) of the ground of detention, the Detaining Authority, while passing the order of preventive detention, has relied upon only the ground case registered under Section 307, IPC, to come to the subjective satisfaction that there is a compelling necessity

> to detain the detenu as "Goonda" under Act 14 of 1982 in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order. The Detaining Authority has not taken into consideration the second adverse case, which was registered under Section 302, IPC, on the very same day by the very same E5 Sholavaram Police Station. The date of occurrence of the second adverse case was 6.7.2009, whereas the order of detention was passed on 21.7.2003, after 15 days of the occurrence. Even as per the Proviso to Section 167(2), Cr.P.C., an accused charged under Section 302, IPC., would be entitled for statutory bail only after a period of ninety days. Normally it is expected that the Courts are not granting bail in major offences like S.302, IPC earlier. Therefore, the releasing of the detenu on bail in the near future is dark. In this context, learned counsel for the Petitioner has contended that if the Detaining Authority would have kept in view the fact that the detenu was an accused in an offence under Section 302, IPC, which had occurred on the very same day, and there is no real possibility on coming out on bail, he would not have passed the order of detention and, therefore, the Detaining Authority has passed the order mechanically without application of mind."

8.The Learned Senior Counsel for the petitioner submits that the Petitioner's husband K.Dhanasekaran cannot be considered as "Slum Grabber" when he is alleged to have been involved in the land grabbing cases and further, the allegations of land grabbing against the Petitioner's husband cannot be considered as having potentiality to disturb peace and tranquility of a specified locality resulting in breach of public order and further, it cannot be said that he has acted in a manner prejudicial to the public order.

9.He seeks in aid a decision of this Court in Vahida V. The State of Tamil Nadu, rep. By its Secretary to Govt., Home, Prohibition & Excise Department, Fort St. George, Chennai [2009 (2) MWN (Cr.) 48 (DB)] wherein, in paragraphs 4 and 5, it is observed and held as follows:

> "4.The Supreme Court, while dealing with a case of this nature, which relates to an offence of land grabbing, in Saravana Babu V. State of Tamil Nadu, 2008 (2) TLNJ 243 (Criminal), has quashed the order of detention holding that the cases affecting the public order are those which have

great potentiality to disturb peace and tranquility of a particular locality; the allegations cannot be called prejudicial to public order; the detenu can be dealt with under the ordinary criminal law if it becomes imperative.

5.In the present case on hand, both the adverse cases and the ground case are registered under the provisions of Act 14 of 1982 branding the detenu as Slum Grabber. Therefore, in view of the law laid down by the Apex Court as stated supra, it cannot be said that the detenu had acted in a manner prejudicial to the maintenance of public order. Hence, following the ratio laid down by the Apex Court in Saravana Babu V. State of Tamil Nadu, we allow this Petition thereby quashing the impugned order of detention."

10.The Learned Senior Counsel for the Petitioner strenuously contends that there is no bar in law for the Petitioner to file another H.C.P.No.571 of 2012 subsequently on new grounds either not raised or not canvassed in earlier H.C.P.No.1498 of 2011 and in this regard, he relies on the decision of the Hon'ble Supreme Court in Shri Lallubhai Jogibhai Patel V. Union of India and others [(1981) 2 SCC 427 at page 428] wherein it is laid down as follows:

"The application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. The principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of hebeas corpus under Article 32 of Constitution on fresh grounds, which were not taken in the earlier petition for the same relief. (Para 13)

In the present case in the subsequent writ petition fresh additional grounds had been taken to challenge the legality of the continued detention of the detenu and therefore, the petition is not barred as res judicata. (Para 14)"

11.The Learned Senior Counsel for the Petitioner submits that even though the detention order speaks of the fact that the Petitioner's husband is in jail in 3 cases, it only considers that in two cases the Petitioner's husband is likely to come out on bail and the third case in Crime No.1107 of 2011 has not been considered by the Detaining Authority and therefore, the detention order is bad in law as per the decision in Rekha V. State of Tamil Nadu through Secretary to Government and another [(2011) 5 Supreme Court Cases 244].

12.The Learned Senior Counsel for the Petitioner invites the attention of this Court to the observation of the Hon'ble Supreme Court in the aforesaid decision in [(2011) 5 Supreme Court Cases 244] at paragraphs 7 and 10 wherein it is held hereunder:

> "7.A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.
>
> 10.In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored."

13.The Learned Senior Counsel for the Petitioner contends that the Detaining Authority has ignored Crime No.1107 of 2011 of R-7 K.K. Nagar Police Station, Chennai from the purview of consideration and therefore, the detention order dated 16.09.2011 suffers from non consideration of vital material.

14.The other contention put forward by the Learned Senior Counsel for the Petitioner is that the Petitioner's husband has been branded as a 'Slum Grabber' and at the time of his detention, the Detaining

Authority has taken into account six cases. In the English version of the grounds of detention dated 16.09.2011, it is mentioned in paragraph 2 that "The 'grounds' on which the said detention has been made are as follows:.....". But, the grounds of detention in Tamil language dated 16.09.2011 in paragraph 2, it is mentioned that "The 'ground' on which the preventive detention order has been made".

15.The grievance of the Petitioner is that in English version of the grounds of detention in paragraph 2, the term 'Grounds' are mentioned in plural. But, in the vernacular language Tamil in regard to the grounds of detention, it is mentioned in singular 'Ground' and this material discrepancy, according to the Petitioner, has caused confusion in the mind of the Petitioner's husband/detenu and he has been deprived of making an effective representation consequently. The Learned Senior Counsel for the Petitioner contends that this is because of the reason that if an order of detention is passed on various grounds, those grounds may be severable as per Section 5A of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). Further, if the order is passed on a sole ground, the instances are not separable.

16.Likewise, the Learned Senior Counsel for the Petitioner submits that in the English version of the grounds of detention dated 16.09.2011, it is mentioned that 'Though the situation on 08.03.2011 and the occurrence committed by the accused Tr.Dhanasekaran was seems to be a law and order situation, if it would not have been caused the disturbance of public peace and it affected the general current public life' and that the Detaining Authority is not clear in mind whether the act of detenu is law and order situation or a public order issue.

17.The Learned Senior Counsel for the Petitioner relies on the Full Bench decision of this Court in Kuppammal and others V. The District Collector and District Magistrate, Thiruvallur District, Thiruvallur and others [2001 (2) MWN (Cr.) F.B. 198] at page 211, in paragraph 40, wherein it is laid down as follows:

> "40.On a consideration of the entire case law on the subject, we are of the considered view that the translated or vernacular copy of the grounds of detention furnished to the detenu should not be a distorted one or it should not give a completely different meaning or version when translated copy of the grounds of detention in the language known to the detenu is furnished. The constitutional requirements would be satisfied by translating and explaining the contents of grounds of detention and furnishing a copy of the grounds of detention in the language known to the detenu and it would be sufficient if

such translation conveys or communicates what had been expressed by the detaining authority in the grounds of detention made in official language and it would be sufficient if the translation conveys the meaning or the implications or what the detaining authority meant and desired to convey and it should not be distorted or it should not give altogether a different meaning."

18.The Learned Senior Counsel for the Petitioner submits that the Detaining Authority in the grounds of detention dated 16.09.2011 in English version has stated that '..... Further the residents of the area also stated that the above act of Tr.Dhanasekaran created scare that there is no safeguard to their properties purchased out of the hard earned money', for which, there is no material placed before the Detaining Authority and supplied to the Petitioner's husband (detenu) and therefore, it is quite evident that Detaining Authority has acted by taking extraneous materials into consideration.

19.It is the contention of the Learned Senior Counsel for the Petitioner that the Detaining Authority, while relying upon numerous grounds, should have employed conjunctive "and". But, he has not used any conjunctives to join the grounds and this exhibits his non application of mind which vitiates the detention order dated 16.09.2011.

20.At this stage, the Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Jagannath Misra V. State of Orissa [AIR 1966 Supreme Court 1140] at page 1143 at paragraph 7 wherein it is held as follows:

"7.There is another aspect of the order which leads to the same conclusion and unmistakably shows casualness in the making of the order. Where a number of grounds are the basis of a detention order, we would expect the various grounds to be joined by the conjunctive "and" and the use of the disjunctive "or" in such a case makes no sense. In the present order however we find that the disjunctive "or" has been used, showing that the order is more or less a copy of S. 3 (2) (15) without any application of the mind of the authority concerned to the grounds which apply in the present case. Learned counsel for the State however relies on the word " etc." appearing in the affidavit. His contention is that as the order of detention had already been mentioned in an earlier part of the affidavit of the Home Minister, the word "etc." used in the later part of the affidavit means that though the affidavit was only mentioning two grounds,

namely, the safety of India and the maintenance of public order, it really referred to all the grounds mentioned in the order. We are not prepared to accept this. If anything, the use of the words "etc." in the affidavit is another example of casualness."

21.The Learned Senior Counsel for the Petitioner cites the decision of this Court in P.A.S.Syed Mohideen V. The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi and another [(1991) 1 MWN (Cri) 226 (HC)] wherein, in paragraphs 11 and 12, it is held as follows:

"11. In this case however we are also inclined to take the view that it was not possible for the detaining authority to make a study of the documents, form opinion whether to detain the petitioner or not and draw the grounds of detention between 20-3-1990 and 22-3-1990. Why the respondents have chosen to be vague and have not specifically stated when they received the documents and the proposal to detain the petitioner is for them to explain. In any event when the proposal and the documents were not available with the detaining authority on any date prior to 22-3-1990, the order could not have been made on 23-3-1990.

12. A Bench of this court in W.P. No. 11887 of 1990 dt. 9-11-1990, referred to above, considered a case in which the copies of the documents furnished to the detenu, were running to 623 pages, and the grounds of detention were said to have been based upon those documents, and the Bench held that the detaining authority could not have read the entire papers, that he could not have applied his mind to the voluminous documents which were placed before him by the sponsoring authority and that it was certainly not possible for the detaining authority to pass the order of detention in one day's time. No doubt, in the instant case, by guess, time may vary between 2 days and 1 day, but the respondents have chosen to be vague in reply to the specific allegation of the petitioner that the proposal could not have been received before 22-3-1990 and the documents bulk, in the instant case, is 464 pages. Learned counsel for the respondents has rightly pointed out that this bulk is on account of one-half of the pages being consumed by the Tamil translation of the English documents. Be that as it may. Assuming that the pages consumed

were 200 plus, the documents were at least not less than 42, because 42 documents have been referred to in the impugned detention order."

22.He also relies on the decision of this Court in Mohamed Marzook V. Mr.Mahendra Prasad, Joint Secretary and the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi [1990 (2) MWN (Cr.) 259] wherein, at page 261 in paragraph 4, it is observed as follows:

"4.Applying the ration in the said case to the facts of this case, it is seen that the detaining authority passed the impugned order relying on the copies of the documents which were furnished to the detenu, which contained 623 pages. The learned Standing Counsel appearing for the respondents did not dispute that it is humanly impossible to read all the 623 pages and pass the impugned order. It is seen from the grounds of detention that the detaining authority has relied on the documents mentioned in the list enclosed to the detention order and the copies of the same were furnished to the detenu (Petitioner) and the same consists of 623 pages. As rightly contended by the learned counsel for the petitioner the detaining authority could not have read the entire papers and could not have applied his mind to the voluminous documents which were placed before him by the sponsoring authority and that it is certainly not possible for the detaining authority to pass the impugned order on the same day. As rightly contended by the learned counsel for the petitioner, the impugned order has been passed in a causal and mechanical manner and that the detaining authority had not sufficient time for coming to the subjective satisfaction to pass the impugned order. As such, the impugned order of detention is to be held not sustainable on the ground of non-application of mind by the detaining authority. This point is found in favour of the petitioner."

23.The Learned Senior Counsel for the Petitioner submits that it is humanly impossible for the Detaining Authority to read 600 pages and the last document is dated 15.09.2011 and the detention order has been passed on 16.09.2011 and the detention order has been passed in a casual and mechanical manner.

24.Also, the Learned Senior Counsel for the Petitioner brings it to the notice of this Court that it is not possible for the Detaining Authority to pass the detention order dated 16.09.2011 in one or two

days and he has not considered the third case in Crime No.1107 of 2011 and if the detention order is perused, there is nothing to show that the grounds or separate grounds and the word "and" is missing.

25.It is the contention of the Learned Senior Counsel for the Petitioner that in a case of Slum Grabbing, it is not a violation of public order and it is a violation of law and the Detaining Authority has considered irrelevant materials and that not a single statement from the public has been recorded and inspite of the voluminous material relied on by the Detaining Authority, there is non application of mind by the Detaining Authority and therefore, the detention order is liable to be set aside, to prevent an aberration of justice.

26.The Learned Senior Counsel for the Petitioner submits that the Detaining Authority has failed to consider that Crime No.916 of 2011 and Crime No.1161 of 2011 relate to a civil dispute and further, in Crl.M.P.No.8860 of 2011 on 23.08.2011, the Principal Sessions Judge, City Civil Court, Chennai has passed an order in regard to the anticipatory bail application [filed by one K.Aravindan] in R-10 Crime No.916/2011 wherein, at paragraph 15, it is observed that 'Thus, it is seen that the allegation in his present complaint dated 31.7.2011 that Kolappan and the legal heirs of late Pandurangan have forged Power Deed after the death of Pandurangan has been exposed by the defacto complainant's own statement in the said legal proceedings.'

27.The Learned Senior Counsel for the Petitioner invites the attention to the order dated 04.08.2011 passed by the Learned Principal Sessions Judge, Chennai in Crl.M.P.No.8154 of 2011 filed by R.Amalraj and 3 others praying for anticipatory bail wherein, in paragraph 3, it is observed as follows:

> "Rajendran was allotted plot by Tamil Nadu Slum Clearance Board. He is now no more. But his children are there. Defacto Complainant is residing nearby. Problem arose between both. It is a question of alleged encroachment to the land. But, it has been disputed. Civil Suit is also pending in the City Civil Court, Chennai."

and submits that the Detaining Authority has not taken into account of an important fact that 'It is a question of alleged encroachment to the land. But, it has been disputed. Civil suit is also pending in the City Civil Court, Chennai.'

28.The Learned Senior Counsel for the Petitioner contends that in regard to the third case in Crime No.1107 of 2011, the Detaining Authority has failed to appreciate that in the FIR defacto complainant has not stated anything about the public order but, he has improved the same in his 161 Cr.P.C. statement etc.

29.In paragraph 4 of the counter filed by the 2nd Respondent, it is stated that the grounds raised and not canvassed in H.C.P.No.1498 of 2011 are not to be taken into consideration in deciding H.C.P.No.571 of 2012 and that the second H.C.P.No.571 of 2012 is not maintainable on the same grounds raised in the earlier petition. Further, it is also mentioned that only on the instructions of the Petitioner the grounds have been urged and not arguing the same cannot be the basis of reopening the petition.

30.The stand taken by the 2nd Respondent in the counter is that second H.C.P.No.571 of 2012 is maintainable only in the event of fresh grounds being made out which are not available when the documents and the detention order were served on the Petitioner.

31.The 2nd Respondent in his counter has averred that the order of detention dated 16.09.2011 has been passed after going through the records and also arriving at subjective satisfaction. Moreover, paragraph 4 of the grounds of detention clearly mentions the compelling circumstances under which the order of detention has been passed. Furthermore, the detenu's bail application moved in R-8 Vadapalani PS Crime No.25 of 2010 has been dismissed on 08.09.2011. His bail application for R-8 Vadapalani PS Crime No.25 of 2011 is pending. Also, his anticipatory bail application for R-10 MGR Nagar PS Crime No.880 of 2011 is pending. The anticipatory bail application for R-7 KK Nagar PS Crime No.1107 of 2011 has been dismissed. He filed bail application for R-7 KK Nagar PS Crime No.1107 of 2011 in Crl.M.P.No.9518 of 2011 and the same is pending. The second anticipatory bail application for R-7 KK Nagar PS Crime No.916 of 2011 is pending. Since in similarly placed cases bails are granted, there is every possibility of the detenu coming out on bail and the similarly placed orders of the Court have also been furnished to the detenu. The conclusion of the Detaining Authority that there is a imminent possibility of the detenu coming out on bail has become true because the bail has been granted in all these cases by various courts.

32.The anticipatory bail order furnished mentions that R-10 MGR Nagar Police Station Crime No.916 of 2011 in which the Petitioner is arrayed as a co-accused. The copy of the order furnished is one obtained by co-accused and the same will fortify the apprehension of the Detaining Authority that the detenu is likely to obtain the similar relief. As a matter of fact, the order mentions the crime number and there can be no confusion arising out of these orders. Mere translation error/clerical/trivial in nature will not vitiate the detention order. The order of detention is to be approved within the time specified in law and the delay in communication is not fatal to the detention order. The detention order has been passed based on

subjective satisfaction after considering all the documents placed in accordance with law.

33.The FIR and connected papers of each case have been relied upon. The FIR is only a First Information relating to a cognizable offence. The FIR sets the criminal law in motion. Much ado cannot be made over mentioning of the Sections in the FIR. Suffice it to state that the ingredients of the offence are made out on the allegations set out in the complaint.

34.The earlier complaint filed by the complainant has not been taken into consideration for passing the order of detention and that the complaint dated 05.09.2011 is registered as R-10 MGR Nagar PS Crime No.1161 of 2011. The copy of FIR is annexed to the booklet as Document No.391 and other connected records have also been furnished to the detenu. Also, the said complaint dated 05.09.2011 speaks about the occurrence of 08.03.2011 and also speak of lodging of the complaint. The non furnishing of the earlier complaint will not cause any prejudice to the detenu, since the subsequent detailed complaint has been furnished to him. The bail applications of the co-accused have been furnished to the detenu with translation. The anticipatory bail furnished mentions that R-10 MGR Nagar PS Crime No.916 of 2011 in which the detenu is a co-accused. The supply of copy of the order obtained by the co-accused will fortify the apprehension of the Detaining Authority that the Petitioner is likely to obtain the similar relief.

35.The new ground that an error has crept in the vernacular translation of the grounds/ground is of no consequence. It is only a clerical/typographical error. A complete reading of the grounds would go to show that the detention order has been passed on the entirety of materials taken into consideration. There are sufficient materials available to show that the Detaining Authority has come to a subjective satisfaction while passing the detention order. The materials provided in the grounds of detention, in unambiguous terms, make out a criminal case. The portion referred to in the bail order is interlocutory in nature and it cannot be construed as a finding on the issue prior to the completion of the investigation/trial. The improvement or otherwise in the Section 161 Cr.P.C. Statement or delay in registering the case are matters for adjudication in trial and not to be considered at the present stage.

36.In response, the Learned Public Prosecutor appearing for the Respondents submits that the Petitioner has deliberately and advisedly not chosen to raise the points in earlier H.C.P.No.1498 of 2011 and further that the second H.C.P.No.571 of 2012 is not competent on the same ground merely because some additional points have been raised. Furthermore, the second H.C.P.No.571 of 2012 is not in existence when orders in H.C.P.No.1498 of 2011 have been passed by this Court on 22.02.2012.

37.In support of the contention that the second H.C.P.No.571 of 2012 is not maintainable before this Court, the Learned Public Prosecutor relies on the observations made by the Hon'ble Supreme Court in Smt.Kavita V. State of Maharashtra and others [AIR 1981 SC 2084] which runs hereunder:

> "... The Petitioner having deliberately and advisedly not chosen to raise the question in the earlier petition, we do not think we will be justified in admitting this writ petition."

38.He further seeks in aid of the decision of the Hon'ble Supreme Court in Ram Kumar Pearay Lal V. District Magistrate Delhi [1966 Cri. L.J. 153 at page 154] wherein it is held as follows:

> "No second petition for writ of hebeas corpus lies to the High Court on a ground on which a similar petition had already been dismissed by the Court. However, a second such petition will lie when a fresh and a new ground of attack against the legality of detention or custody has arisen after the decision on the first petition, and also where for some exceptionable reason a ground has been omitted in an earlier petition, in appropriate circumstances, the High Court will hear the second petition on such a ground for ends of justice. In the last case it is only a ground which existed at the time of the earlier petition, and was omitted from it, that will be considered. Second Petition will not be competent on the same ground merely because an additional argument is available to urge with regard to the same.
>
> Held on facts that second petition was not maintainable as in both the petitions the same matter was put in different words."

39.He also relies on the decision of the Hon'ble Supreme Court in Smt.Panna V. A.S.Samra and others [AIR 1994 Supreme Court 1274] at page 1276 in paragraph 7, it is observed as follows:

> "There is no force even in the third contention of the learned Counsel. The detaining authority in its affidavit before the High Court stated that he had gone through all the documents placed before him and after full application of mind, he culled out the grounds of detention. There is no material on the record to support the contention of the learned Counsel and as such we see no reason to reject the statement of the detaining

authority made on oath before the High Court. Even otherwise the High Court examined the original records and satisfied itself that there was proper application of mind in issuing the detention order."

40.The Learned Public Prosecutor appearing for the Respondents cites the decision of the Hon'ble Supreme Court in A.K.Gopalan and another V. Government of India [1966 CRI.L.J. 602] at page 605 in paragraph 7, it is observed as follows:

"7.Then it is urged that there was no application of mind by the Government of India before the-orders in question were passed, for as many as 140 orders were passed on the same day and that shows that mind could not have been applied to each individual case before so many orders were passed all at once on one day. We are of opinion that there is no force in this convention either. The reply on behalf of Government of India in this connection is that the question as to the detention, of the persons who were ordered to be detained on March 4, 1965 was under consideration of the Government of India. for quite some time and that only detention orders were passed on one day. It has also been stated on behalf of the Government of India that it was satisfied with respect to each individual person ordered to be detained on March 4, 1965 that detention was necessary for reasons already set out and it was after such satisfaction that the orders were passed though they happened to be -.passed on the same day. We are not therefore prepared to accept from the simple fact that as many as 140 orders were passed on the same day there was no satisfaction of the, Government of India with respect to each individual case. We have no reason to hold that the affidavit filed on behalf of the Government of India in this respect should not be believed. This contention must also fail."

41.He also refers to the observation made in paragraph 9 of the aforesaid decision wherein it is inter alia held as follows:

"9.....These orders were passed when the Government of the State of Kerala was being carried on under the Proclamation of September 10, 1964. That did not prevent the Central Government from deciding whether it should itself detain these persons who had till then been detained under the orders of December 29, 1964. If it decided to do so we cannot see anything illegal in

this action. Further as the Government of Kerala was functioning under the President by virtue of the Proclamation, the -decision of the Central Government to detain these persons for itself could be given effect to by asking the President to cancel the orders of the Governor dated December 29, 1964. Thereafter the Central Government could pass the order of March 4, 1965 detaining. the petitioners and others like them. Even where -Persons are detained by orders of the State Government we can see 1 no illegality in the Central Government asking the State Government concerned to withdraw its order of detention and' to detain the persons thereafter by orders of the Central Government, provided the State Government is agreeable to withdraw its order of detention. Therefore there was nothing illegal in the President functioning under the Proclamation of September 10, 1964 withdrawing the orders of detention of December 29, 1964 and thereafter the Central Government passing the orders of detention of its own on the same day. It was not necessary to carry out the empty formality of release from jail under the orders of cancellation and then to arrest the persons released immediately they came out of jail and to serve on them the new order of detention dated March 4, 1965 : (see Smt. Godavari Shamrao Parulekar v. The State of Maharashtra, AIR 1964 SC 1128)."

42.Further, he cites the decision in Srikant V. District Magistrate, Bijapur and others [2006 CRI.L.J. 1557] wherein it is held as follows:

"Subsequent writ petition would be maintainable if circumstances have changed or on the grounds which were not available when the earlier petition was filed. The grounds raised in second writ petition challenging detention order were available to be raised when the earlier petition was filed. That being so, the grounds raised at present can neither be classified as fresh grounds which were not available earlier nor do they constitute changed circumstance. That apart, the contention that it is a void detention order, was available to the petitioner when the first petition was filed. But, the petitioner has failed to raise the same. The position that a subsequent petition can be filed on a fresh ground does not mean that it could be filed on an inadvertently missed out, forgotten or abandoned

ground which was already available when the first petition was filed and not raised for the reason best known to the petitioner, but it must be a ground which was not available when the first petition was filed or there should be a change in circumstance of the case. Second petition which is a subsequent petition by detenu before the same forum against the very same detention order though on a different set of grounds is not maintainable."

43.He also relies on the decision of the Hon'ble Supreme Court in Lallubhai Jogibhai Patel V. Union of India and others [AIR 1981 Supreme Court 728] wherein it is laid down as follows:

"The application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. This principle of public police is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of hebeas corpus under Art. 32 on fresh grounds, which were not taken in the earlier petition for the same relief."

44.Also, the Learned Public Prosecutor quotes the decision of the Hon'ble Supreme Court in T.P.Moideen Koya V. Government of Kerala and others [(2004) 8 SCC 106] wherein at paragraphs 12 and 13 it is held thus:

"12. However, the position here is quite different. After the habeas corpus petition seeking quashing of the detention order passed against the petitioner and for setting him at liberty had been dismissed by the Kerala High Court, the matter was carried in appeal to this Court by filing a petition under Article 136 of the Constitution. After leave was granted, the appeal was dismissed by a detailed judgment wherein all the contentions raised laying challenge to the detention order and also to the continued detention of the petitioner had been considered. The question is whether, even in such circumstances, a subsequent petition under Article 32 of the Constitution seeking to challenge the same detention order would be maintainable.

13. It is well settled that a decision pronounced by a Court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by law. It is in the interest of public at large that finality should attach to the binding

decisions pronounced by a court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. While hearing a petition under Article 32 it is not permissible for this Court either to exercise a power of review or some kind of an appellate jurisdiction over a decision rendered in a matter which has come to this Court by way of a petition under Article 136 of the Constitution. The view taken in Bhagubhai Dullabhbhai Bhandari v. District Magistrate MANU/SC/0011/ 1956:1956 CriLJ1126 that the binding nature of the conviction recorded by the High Court against which a Special Leave Petition was filed and was dismissed can not be assailed in proceedings taken under Article 32 of the Constitution was approved in Daryao v. State of U.P. (supra) (see para 14 of the report).

Further, in the aforesaid decision, in paragraphs 15 and 16, it is, among other things, observed as follows:

"15. We would like to clarify here that the subsequent petition under Article 32 of the Constitution seeking a writ of habeas corpus for setting at liberty a person who has been detained under any of the detention laws would be maintainable if the circumstances have changed. It would also be maintainable on the grounds which were not available when the earlier petition was decided. To illustrate, a detenu soon after his detention may file a habeas corpus petition on the ground that the concerned officer of the Government passing the detention order had no authority to do so or the grounds of detention relate to "law and order" and not to "public order" (in a case where detention order has been passed under National Security Act), If such a petition is dismissed by the High Court and the judgment is affirmed by this Court in a special leave petition under Article 136 of the Constitution, it would always be open to him to tile a petition under Article 32 assailing his continued detention on the ground of inordinate and unexplained delay in consideration of his representation or some procedural infirmity which may have occurred subsequent to the decision of this Court.

16. In the light of the principle discussed above the contention of the petitioner may be examined.

The only ground urged by learned counsel for the petitioner is that at the time of service of the detention order, the petitioner was already in custody, but the detaining authority had not applied his mind to the aforesaid fact whether still there was any necessity to detain the petitioner. It is also urged that the said tact namely, that the petitioner was already in custody having not been mentioned in the detention order, the order of detention passed against the petitioner is wholly illegal. In support of this submission reliance has been placed upon Binod Singh v. District Magistrate, wherein it has been held that if at the time of the passing of the detention order, there is no proper consideration of the fact that the detenu was already in custody or that there was any real possibility of his release, the power of pre-emptive detention should not be exercised. This plea was raised in the habeas corpus petition which was filed in the Kerala High Court. The High Court examined the plea in considerable detail and rejected the same by the judgment and order dated 11.2.2003. Similar plea was also taken in Special Leave Petition (Criminal) No. 1215 of 2003 (vide para Nos. 2.3 and 2.4 and ground Nos. H to L). In fact, in para 7 of the present Writ Petition it is stated that a contention was raised and was specifically argued before this Court in the Special Leave Petition that the order of detention has been vitiated on account of the fact that the same was served upon the detenu while he was in jail, but the fact of his being in custody was not reflected in the detention order. However, a grievance is raised that the said contention has not been dealt with or decided in the judgment of this Court. It is, therefore, apparent that the only plea raised in the present petition had also been raised in the Special Leave Petition which had been filed earlier seeking quashing of the detention order and the release of the petitioner. It is neither a subsequent development nor a new plea which may not have been available at the earlier stage. If the plea raised has not been considered in the judgment rendered by this Court on 28.7.2003 in Special Leave Petition (Criminal) No. 1215 of 2003, as submitted by the petitioner, it cannot be a ground to entertain a fresh petition under Article 32 of the Constitution on the principles

discussed above. In the course of judgment Courts normally deal with only such points which are pressed and argued. If fresh petition under Article 32 is permitted on the ground that certain point has not been dealt with in the judgment a party can file as many petitions as he likes and take one or two new points every time. Besides, if such a course was allowed to be adopted, the doctrine of finality of judgments pronounced by the Supreme Court would also be materially affected. Therefore, having regard to the facts pleaded and the grounds raised, the present petition is not maintainable."

45.In this connection, we make a relevant and useful reference to the definition of Section 2(h) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) deals with 'Slum-Grabber' which reads as follows:

(h)"slum-grabber" means a person, who illegally takes possession of any land (whether belonging to Government, local Authority or any other person) or enters into or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any person on rental or leave and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above-mentioned things."

46.Likewise, Section 2(f) of the Tamil Nadu Act 14 of 1982 concerning the definition of 'Goonda' which enjoins as follows:

"(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 offence Substituted by Act 16 of 2008 for "Punishable under Chapter XVI or XVII or XXII of Indian Penal Code, 1860

(Central Act 45 of 1860)" [punishable under Section 153 or Section 153-A under Chapter VIII or under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act 45 of 1860) or punishable under Section 3 or Section 4 or Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992);]."

47.A person cannot be detained as 'Goonda' unless there are allegations of his involvement in more than one offence on various occasions.

48.A 'Goonda' is one whose acts are prejudicial to public order. When he/she engaged or making preparation for engaging in any activity as a person of 'Goonda' which affects adversely or materially to act adversely, maintenance of public order. The order of detention on the ground that the detenu robbed a wrist watch at knife point is held to be unsustainable as per decision in Mrs.Mala V. Secretary to Government and another [2004 MLJ (Crl.) 306].

49.It is to be borne in mind that the term 'Law and Order' is wider in scope because of the fact that the violation of law always affects order, whereas 'Public Order' has a narrow ambit. The public order will be affected only by such violation which affects the public at large or the community. To put it succinctly, the 'Public Order' will take within its ambit the tempo of life of the community taking the country in entirety or even a particular locality.

50.The distinction between breaches of 'Law and Order' and the 'disturbance of Public Order' is to be drawn based on the following factors:

"1.A contravention of law always affects order, but before it can be said to affect public order, it must affect the community or public at large.
2.Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality.
3.It is the degree of disturbance and its effect upon the life of the community in general or in particular locality which determines whether the disturbance amounts only to breach of law and order or a disturbance of public order.
4.It is potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.
5.If the contravention in its effect is confined only to a few individuals directly involved as

distinguished from wide spectrum of the public, it would cause a problem of law and order only' as per decision in Sanjay Singh V. State of U.P. [2000 Cri. L.J. 1683 at page 1691.]."

51.In the decision of the Hon'ble Supreme Court in P.Mukherjee V. State of West Bengal [AIR 1970 Supreme Court 852] at page 857 in paragraph 9, it is observed as follows:

"9.The difference between the concepts of 'public order' and 'law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr.Allen has distnguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest, and affect individuals only remotely – (See Dr.Allen's Legal Duties, p.249). There is a broad distinction along these lines, but differences naturally arise in the application of any such test. The learned author has pointed out that out of 331 indictable English offences 203 are public wrongs and 128 private wrongs."

52.'Public Order' is not necessarily disturbed by panicking the community by show of force though normally, in a case of infraction of law or use of open force, the disturbance is so sudden and grave that commotion and panic immediately follows: When violence is advocated, it spontaneously tends to disturb the even tempo of life of the society as a whole thereby prejudicially threatening the maintenance of 'public order'. While the various criminal acts leading to 'public disorder' in the society are obtrusive and obvious, certain potential surreptitious and secret unlawful activities may be strikingly prejudicial to the 'public order'. More serious and of wide spectrum are the cases where the 'public order' is disturbed in a clandestine and silent manner, as per decision Ravindra Kumar Agrahari V. Union of India, 2000 Cri LJ 3028 at 3035.

53.In short, the distinction between the areas of 'Law and Order' and 'Public Order' is one of degree and the extent of reach of the act in issue on the society.

54.The potentiality of the act to affect normal way of life of the community which makes it prejudicial to the maintenance of the

public order. If a violation is limited only to a few individuals directly involved, in contra distinction to a wide spectrum of public, it can raise the problem of law and order only. The length, intensity and magnitude of the terror wave unleashed by a certain eruption of disorder that helps to differentiate as an act affecting 'Public Order' from that concerning law and order.

55.There is a thin difference to find out whether certain act can affect the maintenance of public order of the law and order and the effect of a particular act which has to be judged to assess the degree and the extent of its reach on the society to find out whether the said activity has affected the even tempo of the life of community or not. As the facts of no two cases can be similarly identical, it is clearly not possible to decide whether one particular incident is related to the problem of maintenance of public order or law and order.

56.In a case where there is loss of single life and injury to two persons it is held, in the decision Suresh Chandra Katare V. State of U.P. [2001 All LJ 2210], that it is a violation of law and order and not public order.

57.The nature of act will determine whether the act committed by the detenu has impact over the society and can disturb the even tempo of the community or its effect is confined to a few individuals so as to make it a problem of law and order only as per the decision in Anirudha V. D.M.Allahabad, [1987 Cri LJ 1784].

58.It is to be noted that no straight jacket formula can be evolved to find out as to whether certain incidents or the criminal activities will fall within the ambit of 'law and order' or 'public order'. It is the gravity and magnitude of the incidents and the impact of such incidents upon the even tempo of the localities which is a decisive factor as per decision Jaya Daniel Lobo V. A.S.Samra [(1994) 2 Bom CR 429 at 433].

59.In Shamsher Yadav V. Union of India [2006 Cri LJ 708 at 710 (All)] in paragraph 9 and 10 it is held as follows:

> "9.We have considered the arguments of the learned counsel for the petitioner as well as learned A.G.A. And the learned standing counsel for the Union of India and have ourselves perused the petition counter and rejoinder affidavits. So far as the first ground relating to law and order is concerned the same has been pleaded in paragraph Nos.10, 13 and 15 of the writ petition. From the perusal of the grounds of detention (Annexure 2 to the writ petition), which has not been challenged by the detaining authority and other respondents, it is clear that the two

grounds on which the petitioner has been detained are relatable only to law and order and not to public order. Let us make our meaning clear. So far as the ground No.1 is concerned only this much is stated that Sangram Singh was roaming with D.B.B.L. Gun and some cartridge alleged to be belonging to the petitioner. Beside this, nothing in mentioned in ground No.1. This ground can not at all be said to be concerned with public order in any manner whatsoever.

10.So far as the second ground is concerned, the same is based on an incident, which was the outcome of the personal animosity between two factions. The said incident had taken place at 9 p.m. at the door of the persons of rival faction. The incident was not related to any element of public order. In the month of September at 9 p.m. in the village generally people are inside the houses and there are very few people out on the streets and in the open, consequently the public tempo being disturbed by the complained activity is not comprehensible, which in fact was the outcome of village rivalry. We do not mean to say that there cannot be any element of public order in any crime but what to say that there cannot be any element of public order in any crime but what to impress upon is the fact that there is no evidence to show in this particular case that any public order was involved. It is to be recalled that the said incident was of 26.9.2004 and the petitioner surrendered in the Court on 1.10.2004 and since then he was continuously in jail. It was after a lapse of five months (25.3.2005) that the detention order was passed. It is also relevant to point out, from annexure 3 writ petition that dossier from the police station Mohammadabad, Gohana, District Mau is dated 24.3.2005 meaning thereby that there was no recommendation for taking preventive action on or before 24.3.2005 a gap of more than five and a half months. It is also relevant to note that during this period of five and a half months the petitioner was continuously languishing in jai and was not granted bail, we are of the opinion that it was a case of law and order and not public order. So, the detention order in question is bad in law."

60.At this juncture, we deem it appropriate to cite the following decisions:

(a) In Sant Singh V. District Magistrate, Varanasi and others [2000 CRI. L.J. 2230 at page 2231], it is held as follows:

> "8. .... In the instance case, the incident of murder of Bhaiya Lal Maurya had taken place though in the broad day light but at a comparatively lonely place at Chhiohhna trijunction, which is hardly populated. It was not a residential locality. The locus in que is at a distance of about 3 kms. from Garthana Bazar. The 'public order' could not be disturbed at a place where there was in fact no public. There is not even a faint suggestion in the grounds accompanying the detention order that the terror and tension prevailed in the area and that the residents of the nearby localities felt so insure that they confined themselves to their houses after closing doors and windows or that there was any commotion in Grathana market or in any local area. Mere using the bald words that the regional residents of area suffered mental trauma on account of the ill-effect of the incident and that the 'law and order' had completely broken down without any concrete and tangible material is of no consequence. There can be no escape from the finding that it was a case of murder having been committed on account of long standing personal rivarly in an area, which was bereft of the residential houses and market. Every murder has some ill-effect but then in every case it cannot be termed as resulting in 'public disorder'. Our finding in the matter is that it was a case, pure and simple, of breach of 'law and order' and not of 'public disorder'."

(b) In Mustakmiya Jabbarmiya Shaikh V. M.M.Mehta, Commissioner of Police and others [(1995) 3 Supreme Court Cases 237] at page 239, it is observed as follows:

> "9..... In order to bring the activities of a person within the expression of 'acting in any manner prejudicial to the maintenance of public order', the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only

to a breach of 'Law and order' or it amounts to 'public order'. It the activity falls within the category of disturbance of 'public order' then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality."

(c) In Smt.Victoria Fernandas V. Lalmal Sawma and others [AIR 1992 Supreme Court 687], in paragraph 8 and 10, it is held as follows:

"8. .... While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, while 'public order' has a narrower ambit and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise the problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is : Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? This question has to be faced in every case on its facts.

10. .... Where the incidents relied on for ordering preventive detention were a solitary act of assault on a journalist and two incidents of extending threats to journalists the said incidents were not of such a magnitude and intensity as to have the potentiality of disturbing the even tempo of community so as to amount to acts prejudicial to the maintenance of

public order. Consequently, detention order based on the said incidents was liable to be set aside."

(d) In Arun Ghosh V. State of West Bengal [AIR 1970 Supreme Court 1228], it is held as follows:

> "The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very difficult. Similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. Individual act can be a ground for detention only if it leads to disturbance of the current of life of the community so as to amount a disturbance of the public order and not if it affects merely an individual leaving the tranquillity of the society undisturbed.
>
> Public order embraces 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."

(e) In Ajay Dixit V. State of U.P. and others [AIR 1985 Supreme Court 18], the Hon'ble Supreme Court has observed as follows:

> "It is, therefore, necessary in each case to examine the facts to determine, not the sufficiency of the grounds nor the truth of the grounds, but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenu is necessary for maintenance of public order. Thus where one of the grounds mentioned in the

order of detention was old and stale and the other grounds were also unfortunate and the conduct of the alleged detenu was reprehensible and moreover in view of the allegations mentioned in the grounds, the grounds were not of such nature as to lead any apprehension that the even tempo of the community would be endangered, the detention of the detenu under the provisions of S.3(2) was not justified."

(f) In Pushkar Mukherjee and 29 others V. The State of West Bengal [1969 (1) Supreme Court Cases 10], the Hon'ble Supreme Court has held as follows:

" Rule issued to show cause why release from detention should not be ordered against all or any of the respondents.

(a) It is settled law that the satisfaction of the detaining authority under Section 3 (1) of the Act is subjective and not justiciable. Reasonableness of the satisfaction cannot be questioned. State of Bombay v. Atma Ram Sridhar Vaidya, (951) SCR 167, relied upon.

(b) But the satisfaction of the detaining authority can be challenged if the grounds are irrelevant or malafide.

(c) What was meant by maintenance of public order was the prevention of disorder of a grave nature whereas the expression 'maintenance of law and order' meant prevention of disorder of comparatively lesser gravity and of local significance. Dr.Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709, 746 (per Hidayatullah, J.) relied upon.

(d) It is well established that even if one of the grounds or reasons that led to the satisfaction of the detaining authority is irrelevant, the order of detention would be invalid, for it can never be certain to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them. Relies upon:

Shibban Lal Saksena v. The State of U.P., (1954) SCR 418. Dr.Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709.

(e)Even though one ground is vague and the other grounds are not vague the detention order has to be struck down as not in accordance with law. “Vagueness” discussed."

(g)In Sayed Abul Ala V. Union of India and others [(2007) 15 Supreme Court Cases 208] at page 214 & 215 in paragraph 21 to 24, the Hon'ble Supreme Court has observed as follows:

> “21. Proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the Court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he was not guilty of such offence and that the detenu could not indulge in similar activity, if set at liberty.
>
> 22. The detaining authority furthermore is required to borne in mind that there exists a distinction between the 'likelihood of his moving an application for bail' and 'likelihood to be released on bail'. While arriving at his subjective satisfaction that there is likelihood of the detenu being released on bail, recording of the satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough. It would also not be sufficient compliance of the legal obligation that the detaining authority had informed himself that the detenu has retracted from his earlier confession.
>
> 23. So far as the 2nd retraction of confession is concerned, the same is dated 1.6.2000, and thus the same could not have been within the knowledge of the detention authority. Refraction from confession by the detenu although may be one of the grounds for arriving at the conclusion with regard to the subjective satisfaction of the detaining authority, in our opinion, the detaining authority should have also informed himself about the implication of Section 37 of the Act. If the detenu was involved in a large number of cases and the prosecution was aware of the same, it would invariably be brought to the

notice of the court dealing with the application of bail filed by the detenu by the public prosecutor. Further more, the order of the Court granting bail would be passed only when the court dealing therewith forms an opinion that there are reasonable grounds for believing that he is not guilty of such offences that there was no likelihood to commit any offence while on bail.

24. In Amritlal & Ors. vs. Union Govt. through Secy., Ministry of Finance & Ors., (2001) 1 SCC 341, wherein this Court, following the decision in Binod Singh Vs. District Magistrate, Dhanbad (1986 (4) SCC 416, held as under:

"6.The requirement as noticed above in Binod Singh Case that there is ?likelihood of the petitioners being released on bail? however is not available in the reasoning as provided by the officer concerned. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7.The emphasis however, in Binod Singh case that before passing the detention order the authority concerned must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

(h) In Mannar @ Ezhilarasan V. The State of Tamil Nadu rep. by its Secretary to Government Prohibition and Excise Department, Fort St. George, Chennai [2008-1-L.W.(Crl.) 152 at page 153], the Division Bench of this Court has held thus:

"In the instant case, the adverse cases relate to the offence punishable under Sections 457, 380 and 511 IPC, whereas there is only one solitary instance, viz., the ground case, where the detenu had robbed in the public-In view of the decision in R.Kalavathi case 2007-1-L.W. (Crl.) 338 (2006) 6 SCC 14, from one single transaction, though consisting of several acts, a habit cannot be attributed to a person-Stand taken by the detaining authority that the detenu is habitually

committing crime and acted in a manner prejudicial to the maintainable of public order cannot be sustained.

Moreover, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality-HCP allowed.

(i) In Dipak Bose alias Naripada V. State of West Bengal [(1973) 4 Supreme Court Cases 43] the Hon'ble Supreme Court has held as follows:

"Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance of dislocation of the community life of the localities in which they are committed. If in the grounds of detention there was nothing to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order, the two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of the penal laws would be sufficient to cope with them."

(j)In Abdul Razak Nannekhan Pathan V. Police Commissioner, Ahmedabad and another [(1989) 4 Supreme Court Cases 43 at page 44], the Hon'ble Supreme Court has observed as follows:

"The criminal cases against the detenu mentioned in the grounds of detention were confined to certain private individuals. There was nothing in this case to show that the petitioner was a member of a gang engaged in criminal activities systematically in a particular locality which created a panic and a sense of insecurity amongst the residents of that particular area in consideration of which the impugned order was made. The alleged activities of the detenu did

not affect adversely or tend to affect the even tempo of life of the community. They merely related to law and order problem. Their reach and effect was not so deep as to affect the public at large and they did not in any way pose a threat to the maintenance of public order. An act may create a law and order problem but such an act does not necessarily cause an obstruction to the maintenance of public order. So there has been complete non-application of mind by the detaining authority before reaching a subjective satisfaction to make the impugned order of detention."

(k) In Smt.Angoori Devi for Ram Ratan V. Union of India and others [AIR 1989 Supreme Court 371], the Hon'ble Supreme Court has held thus:

"There was an isolated criminal case against the detenus with no sinister significance attached to it. The offence was committed by the detenus, two misguided police men under the cover of darkness with the assistance of a member of the public. It was certainly suicidal to those two police personnel. But it has no connection whatsoever to disturb the 'public order' in the circumstances of the case. Therefore, the order of the detention passed against the detenus would be liable to be quashed. The Court cannot be unmindful of the danger to liberties of people when guardians of law and order themselves indulge in undesirable acts. But the law of preventive detention is not different to police personnel. It is the same law that applies to police as well as to public. Therefore, different standard cannot be applied in respect of acts individually committed by any police officer. The subjective satisfaction of the detaining authority with respect to the persons sought to be detained should be based only on the nature of the activities disclosed by the grounds of detention. The grounds of detention must have nexus with the purpose for which the detention is made."

61.The Petitioner has raised in all 20 grounds in the first H.C.P.No.1498 of 2011 wherein she has prayed for quashing the detention order dated 16.09.2011 passed by the 2nd Respondent under Act 14 of 1982 and resultantly, to direct the Respondents to produce her husband before this Court and to set him at liberty from detention [who is now detained at Central Prison, Vellore].

62.At the time of final hearing of the H.C.P.No.1498 of 2011 by this Court, the Learned Senior Counsel appearing on behalf of the Petitioner has confined to the submission as mentioned in the order dated 22.02.2012 beginning from paragraphs 5 to 17.

63.On going through the new grounds 1 to 10 raised in H.C.P.No.571 of 2012, it is quite evident that except the Ground No.3, other grounds taken in H.C.P.No.571 of 2012 have not been taken in earlier H.C.P.No.1498 of 2011, for the same relief, in our considered opinion. Undoubtedly, the plea of res judicata or constructive res judicata as applicable to civil proceedings is inapplicable to the plea of illegal detention. Therefore, the H.C.P.No.571 of 2012 filed by the wife of the detenu on fresh/new grounds for the same relief is maintainable in law and the point is so answered.

64.As regards the plea taken on behalf of the Petitioner that in the English version of the detention order dated 16.09.2011 in paragraph 2, it is mentioned as 'Grounds' (in plural) and in the Tamil language in paragraph 2, it is mentioned as 'Ground' (in singular) that has caused confusion in the mind of the detenu and there is a material discrepancy, from the voluminous material available on record, it is clear that the Petitioner's husband is a Jail Bird and he is quite aware of the niceties of legal provisions particularly how to make an effective representation. As such, we reject the contra plea taken on behalf of the Petitioner.

65.The penal laws in India are primarily meant to prevent the commission of offences by punishing the offenders. The purpose of punishment to be meted out is to protect the society from undesirable and mischievous persons by deterring the real offenders from committing further offences. Also, the object of punishment is to reform them and ultimately to turn them into law abiding citizens. In this connection, we pertinently recall the words "Manu" which runs as follows:

> "Punishment governs all mankind, punishment alone preserves them, punishment wakes while their guards are asleep, the wise consider the punishment as the perfection of justice"

(Institutes of Hindu Law (Translated by Haughton) Ch.7, para 18 at page 189.

66.That apart, in preventive detention order, the concept of law and order on one side and public order on the other, and the concept of security of State ordinarily and generally will arise. To appreciate the difference between 'concept of law and order, public order and security of State', one has to determine that the bigger aspect that takes within its fold is the concept of law and order. The other one is called as 'Public Order'. The next one is the concept of security of State. A detention order is to be passed only to preserve Public Order or the Security of State. The legal concept of law and order is wider in ambit and it may not necessarily take within its purview the concept of Public Order or the security of the State. The term "law and order" is not a genus, different from public order or security of the State. The real difference between the areas of law and order and public order lies not merely in the nature or quality of the act. However, it is based on the degree and extent of its reach upon society. In one set of given circumstances, the act complained of may affect an individual member of the society only. The similar act done in a different way will have ramifications on the whole society or atleast on a section of the society. In the earlier case, the act, which is made the subject matter of detention, may be categorised as one falling within the ambit of law and order. In the latter case, a similar action may fall within the purview of the expression 'Public Order'. What has to be taken into consideration are the circumstances or the background in the light of which the act has been committed as per Article 22(5) of the Constitution.

67.Article 21 prohibits arbitrary deprivation of life and personal liberty by prescribing that these two possessions can only be taken away as per procedure established by law. It is well settled principle of law that no Authority in India (Legislative, Executive or Judicial) can deprive an individual of his life or personal liberty unless it can justify its stand/ action in accordance with the procedure established by law. In fact, Article 21 of the Constitution of India does not say what the law should be nor does Article 22 of the Constitution say so. Article 22 in a way advances the object of Article 21 of the Constitution, when it speaks of some guaranteed rights available to arrested individuals or detained persons and prescribes the manner in law persons detained preventively to be dealt with.

68.Article 22 of the Constitution prescribes the permissible limits of legislation empowering preventive detention. It enjoins the minimum procedure that should be included in any law permitting preventive detention and as and when such requirements are not observed the detention, even if void ab initio, ceases to be "in accordance with the procedure established by law" and infringes the

fundamental right of the detenu guaranteed as per Articles 21 and 22 (5) of the Constitution as per decision in State of Bombay V. Atma Ram Shridhar Vaidhya [AIR 1951 SC 157].

69.The existence of power of preventive detention is based on safeguards mentioned in Articles 21 and 22 of the Constitution of India. Article 22 in clauses (4) to (7) speaks of safeguard against preventive detention and law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by clauses (4) to (7) of Article 22. The law of preventive detention is to pass the test not only of Article 22, but also of Article 21 of the Constitution of India. No doubt, other than Article 22, Article 21 also prescribes restrictions on the power of preventive detention.

70.As a matter of fact, a combined reading of Articles 21 and 22 of the Constitution of India point out that it allows the punitive and preventive detention if it is in accordance with the procedure established by law. However, the fundamental rights available to a detenu must be strictly enforced notwithstanding the nature of his activities as per decision in Kamleshkumar Ishwardas Patel V. Union of India and others [(1995) 4 Supreme Court Cases 51].

71.In the Tamil translation of the grounds of detention dated 16.09.2011, it is mentioned that ".... Hence, the situation on 08.03.2011 and the incidents committed by the Dhanasekaran are connected with law and order and it will not only affects peace/tranquility among the general public, but also their life."

72.But, in the English version of the grounds of detention dated 16.09.2011, it is mentioned hereunder:

> "Though the situation on 08.03.2011 and the occurrence committed by the accused Tr.Dhanasekaran was seems to be a law and order situation, if it would not have been caused the disturbance of public peace and it affected the general current public life."

73.This Court, on going through the aforesaid English translation portion of the grounds of detention cited supra, opines that 'the lines beginning from '....., if it would not have been caused the disturbance of public peace and it affected the general current public life' are not happily translated in English in a verbatim fashion. But, that by itself will not exhibit the non application of mind by Detaining Authority, as opined by this Court.

74.The plea of vernacular translation of new Ground No.3 raised in H.C.P.No.571 of 2012 has already been taken in H.C.P.No.1498 of 2011 and as such, it is not a new plea being raised by the Petitioner for the first time. Consequently, the Petitioner is

estopped/precluded from taking the said plea in the present H.C.P.No.571 of 2012 once again.

75.(i)The case in R8 Vadapalani Police Station Crime No.25/2010 under Sections 147, 448, 427, 506(ii) I.P.C. r/w 3 of the PPDL Act [including the reopening of the case as per Section 173(8) Cr.P.C. and further investigation is being done in regard to the removal of Tr.Dhanasekaran (Petitioner's husband) and his friends Murugesan, Govindarajan, Ananthalingam etc.]; (ii) The case in R10 MGR Nagar Police Station Crime No.880/2011 under Sections 447, 294(b), 323, 427 and 506(ii) I.P.C. in which the conduct of investigation discloses that Tr.Dhanasekaran with his associates in order to help his DMK Youth wing secretary Tr.Amulraj of MGR Nagar went to Raji's house on 12.05.2011 night threatened him with dire consequences and wrongfully confined the complainant and his family members into the house as narrated above and ultimately grabbed Raji's land to annex with the land of Amul Raj; (iii) The case in R-10 MGR Nagar Police Station Crime No.916/2011 under Sections 120(b), 342, 380, 406, 420, 427, 448, 454, 467, 468 and 506(ii) I.P.C. was registered and that the investigation shows that in order to grab the property the accused Tr.Dhanasekaran (Petitioner's husband) used the forged General Power of Attorney purported to be signed by the victim and using his political and muscle power threatened the complainant Tr.George with dire consequences and also committed robbery of properties about 38 sovereigns gold jewels and Rs.10 lakhs cash grabbed the said property; (iv) The case in R-10 MGR Nagar Police Station registered in Crime No.1161/2011 under Sections 147, 448, 323, 294(b), 506(ii) and 380 I.P.C. and that the accused Dhanasekaran (Petitioner's husband) under his leadership along with Mayil @ Mayilvanan, Lingeswaran, Govindaraj, Soundararajan along with few others trespassed in the complainant's show threatened the complainant of his life and took away the properties mentioned above totalling about Rs.55,000/- and forcibly took possession of his shop [Subsequently, the Sections have been altered as 147, 148, 448, 323, 294(b), 427, 336, 304(ii) and 397 I.P.C.]; (v) The case in R-7 K.K.Nagar Police Station Crime No.1107/2011 under Sections 129(b), 409, 420, 386, 506 (ii) I.P.C. and Section 3 r/w 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 being registered based on the complaint of Jeevanandam against the Petitioner's husband Dhanasekaran etc.; (vi) The case in R-7 KK Nagar Police Station PS Crime No.916/2011 under Sections 147, 148, 294(b), 448, 451, 354, 380, 384 and 506(ii) I.P.C. being registered against Dhanasekaran (Petitioner's husband) and others based on the complaint of Anuradha, as made mention of in the grounds of detention only refers to the law and order situation/provblem involving the acts of the Petitioner's husband (detenu) and the said acts are not affecting the Public Order situation or resulting in breach of public order in contra distinction to the law and order [although micro section of the individual public are affected by the acts of Petitioner's husband].

76.It transpires from the detention order dated 16.09.2011 passed by the 2nd Respondent/Detaining Authority that he has not at all adverted to or taken into consideration the remote possibility of the release of the detenu (Petitioner's husband) on bail in R-7 K.K. Nagar PS Crime No.1107/2011 and this non consideration/failure of consideration of the possibility of the release of the detenu on bail in case involving graver offence amounts to non application of mind, which vitiates the order of detention [notwithstanding the fact that the 2nd Respondent/Detaining Authority in the detention order dated 16.09.2011 in paragraph 4 has referred to other bail applications in Crime No.25/2010 of R-8 Vadapalani Police Station and R-10 MGR Nagar PS Crime No.1161/2011]. To this extent, non application of mind/failure of consideration by the 2nd Respondent/Detaining Authority has clearly been established before us and this vitiates the detention order dated 16.09.2011.

77.We are alive to the fact that an order of detention can ordinarily be passed based on a single/solo act. Whether a single act is enough or not, to sustain an order of detention, will revolve upon the gravity and nature of the act having regard to the fact whether the act is an organised one or a manifestation of organised activities. The contra test is gravity and nature of the act, it is not necessary that there ought to be plurality of grounds for sustaining an order of detention. Even a solitary act can justify the detention, if it is really a grave one which has affected the public order or in fact there being a breach of public order. If the single act has the effect of disturbing public order and even the normal life of the society or community, then, a preventive detention is justified in law.

78.An order of detention is not a curative or reformative or punitive action. However, it is only a preventive action. No wonder, a preventive detention is a devise to afford protection of the society.

79.In regard to the contention that the detention order of the 2nd Respondent dated 16.09.2011 is passed on numerous grounds and they are severable as per Section 5A of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982, it is true that Section 5A has been inserted by Act 52 of 1986 with effect from 05.08.1986 and earlier even if one of the grounds failed, it showed the way for the detenu to come out from other cases. After Section 5A has been inserted, if one or more of the grounds is vague, the detention order can still be good if any one of the grounds deemed to be valid. Only with this background the ingredients of Section 5A of the Act have been inserted. If there is only one composite ground enumerated in several

paragraphs the severability of grounds would not arise as per decision in A.Sowkath Ali V. Union of India and others [AIR 2000 Supreme Court 2662]. But, in the instant case on hand, we have already come to the conclusion that the unlawful acts of the Petitioner's husband Dhanasekaran are only law and order problems not affecting the public order resulting in public breach/peace and therefore, the deeming clause to view as if a separate order of each ground being passed does not assume any significance and in fact, it relegates to the background.

80.Even though the Detaining Authority in the order of detention dated 16.09.2011 in English version has stated the following:

> "The chain of events of unlawful acts of the accused Tr.Dhanasekaran is made clear that these facts of the case, it was difficult to bring to these acts which were liable to be dealt with under the ordinary laws of land, a public order dimensions within the meaning of and for purpose of the ex-ordinary law of preventive detention."

yet, the acts complained of concerning the Petitioner's husband can be tackled under the ordinary laws of the land to establish when admittedly he has been charged under various Sections of I.P.C. etc., in various crime numbers before concerned Magistrate Courts.

81.The preventive detention is a harsh measure and though in page 14 of the English version of the detention order dated 16.09.2011, the 2nd Respondent has mentioned that 'Further, the residents of the area also stated that the above act of Tr.Dhanasekaran created scare that there is no safeguard to their properties purchased out of the hard earned money', these are all only ritualistic rhetorics being employed in the absence of any such material being placed before the Detaining Authority and supplied to the detenu [like the statements of residents of the area]. Therefore, it is latently and patently quite clear that the 2nd Respondent has taken into account the extraneous matter into consideration at the time of passing of the detention order dated 16.09.2011 and on this ground, the said order of detention stands vitiated.

82.Dealing with the plea on the side of the Petitioner that while relying upon numerous grounds, the 2nd Respondent/Detaining Authority should have employed conjunctive "and" and that he has not used any conjunctives to join the grounds and therefore, it exhibits the non application of mind, it is to be pointed out that the 2nd Respondent / Detaining Authority, in the detention order, has to assign reasons and there is no rule of thumb which enjoins the employment of any particular language or certain specified format. As such, the non user of the conjunctive 'and' pales into insignificance and the same is not fatal, as opined by this Court.

83.In regard to the plea of the Petitioner that the statement of witnesses dated 19.01.2010 in Crime No.25/2010 completely exonerates the detenu and further, the Detaining Authority has failed to consider Crime No.916/2011 and Crime No.1161/11 do arise out of a single civil dispute/civil litigation and moreover, the Detaining Authority has failed to consider the order of the Principal Sessions Judge in Crl.M.P.No.8860 of 2011 dated 23.08.2011 in R-10 Crime No.916/2011 and also an order of the Learned Principal Sessions Judge in Crl.M.P.No.8154 of 2011 in R-10 Crime No.880/2011 dated 04.08.2011 and in Crime No.1107 of 2011, the defacto complainant has not stated anything about the public order but only he has improved the same in his 161 Cr.P.C. statement or delay in regard to the registration of complaints, we are of the opinion that these nuances/niceties/intricacies of law are to be agitated/canvassed before the appropriate criminal Court at the time of trial and they are not germane for the present. Further, the Petitioner cannot bank upon the observations made by the Learned Principal Sessions Judge while disposing of the Crl.M.Ps. which are only tentative and not final adjudication of the matter [before the completion of investigation/ trial], to his advantage because of the fact that at the time of passing of the order of detention, the Detaining Authority is to look into the matter, collected by the Police during investigation, when such materials are quite relevant for the purpose of forming subjective satisfaction regarding detention. No elaborate or detailed examination of the merits of the matter, need be gone into by the Detaining Authority at the time of passing of the detention order. Also, the 'Bail' or 'Jail' is the blurred area of criminal jurisprudence, as opined by this Court.

84.In regard to the contention of the Petitioner that it is impossible for the Detaining Authority to peruse nearly 659 pages on a single day and to prepare the grounds of detention viz., 18 pages in English and 24 pages in Tamil version and therefore, it exhibits non application of mind. It is to be pointed out by this Court that no straightjacket cast iron formula or fixed parameter can be laid down by any one because of the fact going through the contents of nearly 659 pages depends upon the intelligent quotient, sharpness, ability, competence and capability of an individual. Therefore, the contra plea taken on behalf of the Petitioner is of no avail.

85.In regard to the plea of the Petitioner that before registering the case, a CSR has been registered but not documents produced etc., in the counter, the Detaining Authority has stated that the mentioning of CSR is only a narration of the facts of the case and the same has not been relied upon as a document by him and therefore, the non placing of the same will not vitiate the detention. As such, the stand of the Petitioner that he has been deprived of a making an effective representation has no legs to stand.

86.In the light of the detailed discussions and on consideration of the entire gamut of the material available on record, we come to an irresistible conclusion that in the present case on hand, it cannot be said that the Petitioner's husband K.Dhanasekaran has acted in a manner prejudicial to the maintenance of public order. The criminal acts/cases complained of against the Petitioner's husband are confined to specific private individuals and only relate to Law and Order, which, in our considered view can be dealt with under ordinary criminal and other laws of the land applicable if any [as seen from the various criminal cases in numerous crime numbers filed against the Petitioner's husband as made mention of in the detention order passed by the 2nd Respondent/Detaining Authority dated 16.09.2011]. In reality, the offences alleged against the Petitioner's husband (detenu) do not affect adversely the maintenance of public order. In short, there are no existence of sufficient causes for preventive detention in the case on hand. Moreover, the alleged criminal acts/activities of the detenu (Petitioner's husband) are not travelling beyond the arms of ordinary law to deal with him. In fact, the acts complained of against the Petitioner's husband viz., detenu do not affect the community at large having a bearing on the issue of maintenance of public order. The absence of consideration by the 2nd Respondent/Detaining Authority in regard to the remotest possibility of the detenu viz., K.Dhanasekaran coming out of bail in Crime No.1107/2011 of R-7 K.K. Nagar Police Station [concerning with graver offence] amounts to failure of consideration/non application of mind, which, in the eye of law, vitiates the order of detention. As such, the Order of Detention dated 16.09.2011 of the 2nd Respondent/Detaining Authority is illegal and unjustified, in view of the fact that the same is not in accordance with the procedure established by law. Viewed in that perspective, we allow the Hebeas Corpus Petition.

87.In the result, the Hebeas Corpus Petition is allowed and the impugned Order of Detention passed by the 2nd Respondent, in his Proceeding No.303/BDFGISSV/2011, dated 16.09.2011 is quashed. The detenu viz., K.Dhanasekaran is directed to be set at liberty forthwith, unless his presence is required in connection with any other case/cause.

Sd/-
Asst. Registrar[CO]

/true copy/

Sub Asst. Registrar.

Sgl

To

1.The Secretary to Government,
State of Tamilnadu,
Prohibition and Excise Department
Fort. St. George, Chennai-600 009.

2.The Commissioner of Police,
Chennai.

3. The Superintendent, Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government,
Public [Law and Order] Department,
Fort St. George, Chennai 9.

5. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.R.Vivekananthan, Advocate Sr 30072

H.C.P.No.571 OF 2012

pur[co]
gp/28.5