

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.562 of 2017

Chandrakasan .. Petitioner

Vs

- 1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The District Collector and District Magistrate,
Ariyalur District,
Ariyalur. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records relating to petitioner's son detention order under Tamil Nadu Act 14 of 1982 vide detention order dated 04.03.2017 on the file of the 2nd respondent herein made in proceedings Cr.M.P.No.06/2017 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Karuppaiah, aged 25 years, S/o.Chandrakasan, before this Hon'ble High Court and set the petitioner's son at liberty from detention, now petitioner's son is detained at Central Prison, Trichirappalli.

For Petitioner : Mr.S.Senthil Vel
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by A.SELVAM, J.]

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records relating to the detention order passed in Cr.M.P.No.06/2017 dated 04.03.2017 by the Detaining Authority against the detenu by name, Karuppaiah, aged 25 years, S/o.Chandrakasan, residing

at Asari Theru, Puthupalayam Village, Ariyalur Taluk, Ariyalur District and quash the same.

2. The Inspector of Police, All Women Police Station, Jayankondam, as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that one Karuppayee, aged 17 years, daughter of Sivanandam, as defacto complainant, has given a complaint to the Inspector of Police, All Women Police Station, Jayankondam, wherein it is stated that on 20.12.2016 at Kaikaatti Bus Stop, the detenu has voluntarily expressed his love to the defacto complainant and initially the defacto complainant has refused and after sometime, both of them have boarded in a bus and thereafter, both of them alighted from the said bus and the detenu has taken the defacto complainant to an isolated place and against her will, the detenu has had sexual intercourse with her. Under the said circumstance, the complaint given by the defacto complainant has been registered in Crime No.13 of 2016 under Section 9 of Prohibition of Child Marriage Act, 2006 and also under Sections 366(A), 323, 506(i) of Indian Penal Code and also under Section 4 and 6 of Protection of Children from Sexual Offences Act, 2012 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. The Detaining Authority after considering the averments made in the affidavit and other connected documents, has derived a subjective satisfaction to the effect that the detenu has committed grave offence against the defacto complainant and ultimately branded him as "Sexual Offender" by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the father of the detenu, as petitioner.

4. Even though this Habeas Corpus Petition has been posted for filing counter on the side of the respondents, counter has not been filed. Under such circumstance, this petition is disposed of on merits on the basis of available records.

5. Learned counsel appearing for the petitioner has contended to the effect that the petitioner has given a representation to the concerned authorities. But, the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

6. Learned Additional Public Prosecutor has contended that the representation given by the petitioner has been disposed of without delay and the said circumstances, the contention put forth on the side of the petitioner is liable to be rejected.

7. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that in between column Nos 7 and 9, eleven clear working days are available

and in between column Nos.12 and 13, twenty six clear working days are available and no explanation has been given on the side of the respondents with regard to huge delay and the same would affect the rights of the detenu guaranteed under Article 22[5] of the Constitution of India and therefore, the Detention Order in question is liable to be quashed.

8. In fine, this petition is allowed. The Detention Order dated 04.03.2017 passed in Cr.M.P.No.06/2017 by the Detaining Authority against the detenu by name, Karuppaiah, aged 25 years, S/o.Chandrakasan, residing at Asari Theru, Puthupalayam Village, Ariyalur Taluk, Ariyalur District is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gpa

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 3.The District Collector and District Magistrate,
Ariyalur District,
Ariyalur.
- 4.The Superintendent,
Central Prison, Trichirappalli.
[in duplicate for communication to the detenu]
- 5.The Public Prosecutor,
High Court, Madras.

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SVI (CO)
sp(02/08/2017)