

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.862 of 2017

M.Devi

.. Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
St. George Fort,
Chennai-600 009.

2.The District Collector
Dharmapuri
Office of the District Magistrate and
District Collector, Dharmapuri ... 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 connected with the order of the 2nd respondent herein in Memo S.C.No.42 of 2016 dated 28.12.2016 against the detenu, namely Eswaran, aged 22 years, S/o.Muniraj, Seeriyampatty Post, Seerandapuram Village, Now at Pudur Mariyammal Koil Street, Poovankottai Village, Palacode Taluk, Dharmapuri District, who is confined at Central Prison, Salem and set aside the same and consequently direct the respondents to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.R.Chellappan
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 S.C.No.42 of 2016 dated 28.12.2016 by the Detaining Authority against the detenu

by name, Eswaran, aged 22 years, S/o.Muniraj, Seeriyampatty Post, Seerandapuram Village, Now at Pudur Mariyammal Koil Street, Poovankottai Village, Palacode Taluk, Dharmapuri District and quash the same.

2. The Inspector of Police, Palacode Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that on 04.12.2016 at about 11.30 hours, one Selvi.Suriya, D/o.Madesh, residing at Panankadu Village, back side of Saravana Theatre, Palacode Post, Palacode Taluk, Dharmapuri District, as defacto complainant, has given a complaint wherein it is alleged to the effect that during the relevant period, she has been studying first year BBA in Sri Vijay Vidhyalaya College at Nallampalli. The father of the defacto complainant is doing cooli work. The defacto complainant has failed in 10th Standard. Hence, she joined in Dhanalakshmi Tuition Centre. During June 2014, one M.D.Sivakumar, during lunch hours, has asked her to come to his room and accordingly, she has gone there and suddenly he locked the door and thereafter denuded her and despite of resistance given by her, he has had sexual intercourse with her twice and subsequently he threatened her by way of saying that she should not divulge the occurrence to anybody. Further he has threatened her by way of saying that he has recorded all sexual activities in his cellphone. Considering the dire consequence of the threat made by him, the defacto complainant has not stated the occurrence to anybody. After few months, the grandmother of the defacto complainant has told the mother of defacto complainant about the sexual picture comes through cellphone and subsequently, the defacto complainant has been enquired into and she narrated the entire episode to her mother and thereafter, both of them have gone to Palacode Police Station and given a written complaint against the said M.D.Sivakumar and the same has been registered in Crime No.418 of 2016 under Sections 5(1)(f) r/w.6,13,14, and 15 of Protection of Children from Sexual Offence Act, 2012 and also sections 292 and 506(i) of Indian Penal Code and ultimately requested the Detaining Authority to invoke Act 14, 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 present detenu and the said M.D.Sivakumar have committed heinous offence and ultimately branded them as "Sexual Offener" 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. In the counter filed on the side of the detenu it is averred that most of the averments made in the petition are

false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority, after perusing the same and other connected papers, has derived a subjective satisfaction to the effect that the present detenu and the prime accused M.D.Sivakumar has committed heinous offence and rightly branded them as "Sexual Offender" by way of passing the impugned Detention Order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

5. Before contemplating the rival submissions made on either side, the Court has to perorate the circumstance under which the present detenu has been brought as one of the accused in Crime No.418 of 2016.

6. In fact, this Court has perused the entire allegation made in the complaint dated 04.12.2016 alleged to have been given by the prosecutrix by name Suriya, wherein no allegation has been made against the present detenu. Further, it is seen from the Case Diary that the prime accused M.D.Sivakumar has been arrested and he has given a voluntary confession statement, wherein it is clinchingly stated to the effect that the present detenu has received the cellphone of prime accused and subsequently transmitted sexual scene to some other cellphones. Under the said circumstance, the present detenu has also been roped in as one of the accused in Crime No.418 of 2016.

7. The learned counsel appearing for the petitioner has repeatedly contended to the effect that the detenu has been supplied with a booklet wherein at Page No.57, English version of remand order is found place and its Tamil version is available at Page No.58. But the Tamil version is not identical with English version.

8. In fact, this Court has perused both English version and also Tamil version of Remand Order and no appreciable/acceptable difference is found place in Tamil version and further, the same would not cause prejudice to the detenu. Therefore, the first contention put forth on the side of the petitioner cannot be accepted.

9. The next contention put forth on the side of the petitioner is that in the booklet, similar case particulars are available at Page No.74, wherein a bail application filed in CrI.M.P.No.250 of 2016 in Crime No.3 of 2016 is available.

10. In fact, this Court has perused both the bail petition and the orders passed thereon. No ambiguity is in existence and further the second point urged on the side of the petitioner would not create prejudice in the mind of the detenu.

11. As adverted to earlier, in the complaint alleged to have been given by the prosecutrix, no mention has been made against the present detenu. But, on the basis of the confession statement alleged to have been given by the prime accused, the present detenu has been roped in as one of the accused in Crime No.418 of 2016. Further, it has already been decided that the points raised on the side of the petitioner are nothing but nugae and the same would not cause any prejudice to the detenu. Therefore, we are of the considered view that the contentions put forth on the side of the petitioner cannot be accepted and altogether, the present petition deserves to be dismissed.

In fine, this Habeas Corpus Petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//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,
Home Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-9.
 - 3.The District Collector
Dharmapuri
Office of the District Magistrate and
District Collector, Dharmapuri
 - 4.The Superintendent
Central Prison, Salem
 - 5.The Public Prosecutor,
High Court, Madras.
- +lcc to Mr.M.R.Chellappan, Advocate, S.R.No.56943

H.C.P.No.862 of 2017

PVS (CO)
GN(31/08/2017)