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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.31 of 2017

M.Selvi

... Petitioner

-vs-

- 1.The State of Tamil Nadu,
rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Kalaiyarkoil Police Station,
Kalaiyarkoil,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd Respondent in Cr.M.P.No.32/S.O./2016 dated 20.12.2016 and quash the same and direct the Respondents to produce the person or body of the detenu, Siva, S/o. Mani, aged about 21 years, before this Hon'ble Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.S.Mahendrapathy

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of the detenu, namely, Siva, son of Mani, Male, aged about 21 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.32/S.O./2016, dated 20.12.2016, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that the bail application filed by the petitioner was dismissed on 14.12.2016. Thereafter, the detenu has not filed any bail application. However, the detaining authority by relying on a similar case like the ground case registered at Sivaganga All Women Police Station Crime No.1 of 2016 u/s 5(1)(j)(ii) & 6 of Protection of Children from Sexual Offenders Act, 2012 has come to the conclusion that there is real possibility of the detenu coming out on bail. According to the learned counsel, bail was granted to the accused in the said case after expiry of 90 days, which is beyond the statutory period.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in the ground case in Crime No.496 of 2016 before Kalaiyarkoil Police Station, no bail application has been filed so far. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere *ipse dixit* and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. In that case bail was granted by default by placing reliance on the statutory provisions. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.32/S.O./2016, dated 20.12.2016, passed by the second respondent is set aside. The detenu, namely, Siva, son of Mani, aged about 21 years, is



directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(Crl side)

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/ True Copy /

Sub Assistant Registrar(C.S.)

To:

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George,
Chennai - 600 009.
- 5.The Inspector of Police,
Kalaiyarkoil Police Station,
Kalaiyarkoil,
Sivagangai District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.MAHENDRAPATHY, Advocate SR.No.63842

sj

MAS/MR-KKR/SAR2:12.07.2017:3P-7C

H.C.P. (MD) No.31 of 2017
04.07.2017