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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 05.06.2017

Date of Pronouncement : 19.06.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

H.C.P(MD)Nos.1722 of 2016 and 7 and 10 of 2017

R.Elusammal : Petitioner in all H.C.Ps.

Vs.

1. The State of Tamil Nadu,
rep. By its Principal Secretary to Government,
Home, (Prohibition and Excise Department),
Secretariat, Chennai - 9.

2. The District Collector/District Magistrate
Collectorate,
Sivagangai District,
Sivagangai.

3. The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.

: Respondents in all H.C.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order in Cr.M.P.No.18/S.O./2016, Cr.M.P.No.17/S.O.2016 and Cr.M.P.No.19/S.O./2016 dated 04.07.2016 passed by the respondent No.2 on the petitioner's sons namely, R.Nagaraj, aged 25 years, S/o.Rajamanickam, R.Selvam, aged 40 years, S/o.Rajamanickam and R.Arumugam, aged 21 years, S/o.Rajamanickam, who have been detained and branded as Sexual Offenders under the Tamil Nadu Prevention of Dangerous activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982) and confined at Madurai Central Prison, Madurai District and Porsthal School/District Prison, Pudukottai before this Court and set them at liberty forthwith.



For Petitioner : Mr.J.Pandidorai.
For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.

ORDER

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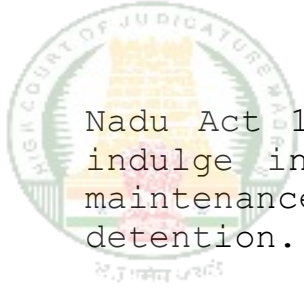
(Order of the Court was made by **P.VELMURUGAN, J.**)

Heard Mr.J.Pandidurai, learned counsel for the petitioner in all petitions and Mr.C.Ramesh, learned Additional Public Prosecutor, appearing for the respondent in all petitions.

2.In these Habeas Corpus Petitions, the Petitioner - Mother of the Detenu, challenges the orders of detention passed on the Detenu by the second Respondent, branding them as "Sexual Offenders", under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

3.The case against the detenu is that the defacto complainant's daughter viz., Rudhra is aged about 6 years at the time of occurrence and when her mother took her to take bath, Rudhra pointed out her genitalia and told that it was aching and thereafter, the defacto complainant noticed that there was swelling in the genetalia and on enquiry, she refused to tell the truth and hence, she heat up the child and in the school, when the teacher had enquired the girl informed that on 19.04.2016 while the girl was playing with neighbour childeren, the detenu viz., Selvam, Nagaraj and Arumugam have taken the child into their house by saying with delicacy manner as to give dress and locked the door and they removed the clothes of the girl and put her in bed and Selvam was pressing to keep his penis on her vagina and buttock and since Rudhra unable to bear the pain, he closed her mouth and involved sexual intercourse with her and other two detenu also have done the same with her and also, they compelled her to have oral sex by sucking their penis by the girl and hence, the case in crime No.8 of 2016 has been registered against the detenu for the offence under Section 342 of I.P.C. and Section 5 (g) (m) read with 6 of Protection of Children from Sexual Offences Act, 2012. During the investigation, it was found that the same detenu had invovled in the same offence with another girl by name Easwari @ Nithya.

4.Therefore, consequent upon the recommendations made by the Sponsoring Authority that the Detenu were involved in POCSO Act, the Detaining Authority, on being satisfied that the Detenu <https://hcservices.tn.gov.in/hcservices/> committing grave crime and are also acting in a manner prejudicial to the maintenance of public order and branding them as a "Sexual Offenders", as contemplated under the Tamil



Nadu Act 14/1982, and if the Detenu come out on bail, they will indulge in future activities, which will be prejudicial to the maintenance of public order, passed the impugned orders of detention.

5. The learned counsel for the petitioner would submit that the detaining authority, without applying his mind, passed the impugned order, violating Article 21 of the Constitution of India. He would further submit that while recording the subjective satisfaction for imminent possibility for coming out of the bail, the detaining authority, in his order, has stated that in a similar case, one Elumalai released on bail in Cr.M.P.No.299 of 2015 dated 24.04.2015 in crime No.5 of 2015 for the alleged offences under Section 5(m) read with 6 of POCSO Act, 2012 and hence, there is a possibility that the petitioner come out on bail. However, according to the petitioner, the said case does not construe as similar case, since he is not co-accused in the present case. The detaining authority has not considered the said aspect, which would show his non application of mind, while passing the detention order. He would further submit that since the petitioner is her neighbour, due to enmity only, she has given the false complaint against the detenu.

6. The learned counsel for the petitioner would further submit the victim sustained injury, which is alleged to be inflicted by her mother, which shows that with intention to foist a false case, the injury was created. He would further submit that the detenu have been detained as Sexual Offenders only on an solitary instance viz., the ground case alone, which violates Section 2(f) of the Act. and hence, he prayed for the quashing of the detention order.

7. Resisting the same, the learned Additional Public Prosecutor would submit that the detaining authority has considered the aspect and passed the detention orders. He would further submit that considering the gravity of the offence, even in a solitary incident, detention order can be passed. He would further submit that in respect of arriving to the conclusion for the subjective satisfaction for the real possibility of the detenu coming out on bail is concerned, he relied upon para 4 of the detention order, wherein, it was specifically mentioned that in a similar case, one accused viz., Elumalai has released on bail and in the case also, bail petition filed by the detenu viz., Nagaraj in CrI.O.P.(MD) No.10933 of 2016 was pending, the detaining authority has come to the subjective satisfaction in respect of imminent possibility for coming out of bail and passed the order. He would further submit that in respect of the injury sustained by the victim girl is concerned, since the girl has not told the respondent police found that the detenu had involved the same offence with another girl by name Easwari @ Nathiya and both the



girl were brought before the learned Judicial Magistrate and 164 Cr.P.C. statement were also recorded and hence, the detaining authority is right in passing the impugned order and hence, he prayed for the dismissal of the habeas corpus petition.

8. We have considered the submissions made on either side and perused the materials on record.

9. According to the petitioner, a false case has been foisted against the detenu due to enmity. But, perusal of the records would show that the detenu, with an intention to commit sexual assault on the victim, they took her in their house and saying some legacy words, they committed sexual assault.

10. Perusal of the statement given by the defacto complainant would show that when he took her daughter to take bath, the girl stated that she felt pain in her genitalia and she noticed that her genitalia was swelling and on enquiry, the girl refused to say the truth and hence, she heated up the victim for hiding the truth. This statement was corroborated by the statement of doctor, who examined the victim girl viz., Rudhra, where, she has stated there was an injury 5 cm over left thigh alleged to be inflicted by her mother as she was hiding the truth. Therefore, it is clear that since the victim girl was hiding the truth from her mother, she inflicted the said injury. Therefore, the contention raised by the learned counsel for the petitioner that due to enmity and for registration of a false case, the mother of the victim has inflicted the injury is not acceptable.

11. The other contention raised by the learned counsel for the petitioner is that there are no previous case as against the petitioners and there are no adverse cases and merely on the ground case, the detention order is passed. This is a very worst and unfortunate case, where the detenu had taken a six year old child to their house with evil desire to commit sexual assault on her. Even, one Easwari @ Nathiya, who is the relative girl of the detenu was examined before the learned Judicial Magistrate under Section 164 of Cr.P.C., wherein, she has stated about the commission of sexual offence by the detenu on the same day. Therefore, we are of the considered view that the detenu are habitual offenders of POSCO Act and considering the gravity of the offence, even in a solitary incident, detention order can be passed. At this juncture, it is pertinent to refer the case of E.Subblakshmi V. Secretary to Government and others, 2017 CRI.L.J.1006 and relevant portion in para 13 is extracted herein:

"13. The counsel for the petitioner, relying on the decision in R.Kalavathi V. State of T.N and others (2006) 6 SCC 14, lastly contended that the subjective satisfaction of the Detaining Authority is found only on solitary ground case being Crime



No.2348 of 2015. According to him, an action under the Act of 1982 can be initiated or resorted to only against habitual offenders and nowhere it is a case of solitary crime. The argument, though attractive at the first blush, deserves to be stated to be rejected. The ground of detention must be read as a whole. No doubt, it principally relies on the ground case being crime No.2348 of 2015 but also adverts to other serious offences registered against the detenu and pending trial, such as Crime No.598 of 2015 registered at D.6, Anna Square Police Station; Crime No.3/2015 registered at Aavudaiyar Koil Police Station and including the conduct of the detenu when he tried to escape from the police custody. The totality of the circumstances having been taken into account by the Detaining Authority, there is no reason to doubt the subjective satisfaction arrived at for issuance of the impugned detention order, in the fact situation of the present case. Notably, this ground has been urged in the rejoinder submissions. Accordingly, even this contention does not deserve any further consideration."

12.A person who has deprived another person completely of her liberty forever and has endangered the liberty of her family, has no right to ask the court to uphold his liberty. Liberty is not a one sided concept, nor does Article 21 of the Constitution contemplate such a concept. Lawlessness is the order of the day. Even the kith and kin, close relatives, friends, neighbours and passers-by who happen to witness the occurrence are threatened and though they initially give statements to the police, invariably turn hostile, apparently because of the threat meted out to them by the hardened and professional criminals and gangsters. It is the hard reality that the State machinery is not able to protect or guarantee the life and liberty of common man.

13.From the statement made under Section 164 of the Code of Criminal Procedure given by the victim girl Rudhra and another girl Easwari @ Nathiya, who is aged nine years, we presume that the evidence of six year and nine year old girl cannot be understood by giving a literal meaning to each word spoken by her. It should be appreciated by understanding the meaning that they wanted to convey in their language, which was familiar to them as a child. Thus, we understand from their evidence that what they meant was that the detenu attempted to insert their penis into their vagina and they also subjected them for oral sex, by giving their penis into their mouth for sucking. Thus, in our considered view, the offence committed by the accused was an attempt to commit a non-consensual sexual assault and the detaining authority has considered all the aspects, has rightly passed the impugned order and we find no reason to interfere with the said detention order.



14. Thus, for the above reasons, the Habeas Corpus Petitions are dismissed.

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Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, (Prohibition and Excise Department),
Secretariat, Chennai - 9.
2. The District Collector/District Magistrate
Collectorate,
Sivagangai District,
Sivagangai.
3. The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.
4. The Joint Secretary to Government, Public (Law & Order),
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) Nos.1722 of 2016 and 7 and 10 of 2017
19.06.2017

Arul
SDS/GT/SAR 1/30.06.2017/6P/6C