

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 256 OF 2018

Anjammal

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By the Secretary
Home, Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.

2. The District Collector
& District Collector
Nagapattinam
Nagapattinam District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed in Memo No.C.O.C. No.75/2017 dated 30.10.2017 passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu, Vijayakumar, S/o Munusamy, aged about 40 years, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. J.Ramkumar

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The second respondent clamped an order of detention on 30.10.2017 as against Vijayakumar, S/o Munusamy, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Sexual Offender' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has come forward with the present habeas corpus petition.

3. Heard Mr.Ramkumar, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. The detenu is facing charges u/s 4 and 8 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'), registered by the Tiruchirappalli Police Station in Crime No..229/17. The allegation against the detenu is that a dumb girl, who is also physically challenged, and has studied only upto 5th standard has been sexually abused.

5. Learned Addl. Public Prosecutor submits that investigation in the case is over and final report has been filed in the case registered under the POCSO Act.

6. The fact remains that it is the only case registered against the petitioner. It is trite to point out that the subjective satisfaction should be arrived at by the detaining authority on reliable and cogent materials for coming to the conclusion that the detenu will indulge in similar acts, if detention is not clamped on the detenu. However, the satisfaction arrived at by the detaining authority is not based on relevant materials. The detaining authority merely states that in order to prevent the detenu from indulging in similar kind of activities, the order of detention has been passed. That cannot be a ground for the detaining authority to clamp an order of detention. Though the offence is serious in nature, however, the criminal machinery, which had been set in motion, would have to be taken to its logical end by the Trial Court passing a judgment after full fledged trial. Imposition of punishment by way of preventive detention is impermissible pending trial.

7. For the reasons aforesaid, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Vijayakumar, S/o Munusamy, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

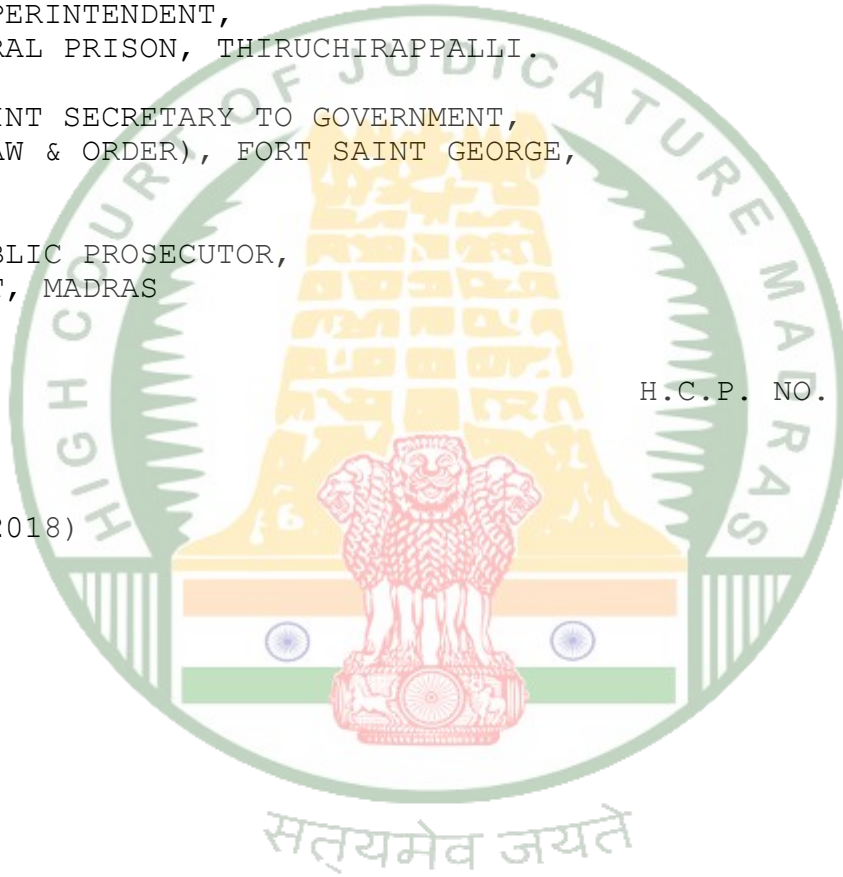
GLN

To

1. THE SECRETARY, THE STATE OF TAMIL NADU
HOME, PROHIBITION & EXCISE DEPT.
FORT ST. GEORGE, CHENNAI 600 009.
2. THE DISTRICT COLLECTOR
& DISTRICT COLLECTOR
NAGAPATTINAM
NAGAPATTINAM DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, THIRUCHIRAPPALLI.
4. THE JOINT SECRETARY TO GOVERNMENT,
PUBLIC (LAW & ORDER), FORT SAINT GEORGE,
CHENNAI 9
5. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS

H.C.P. NO. 256 OF 2018

GP (CO)
TR(26/07/2018)



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