

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.NO.955 OF 2019

S.Indumathi

... Petitioner

-vs-

1. State of Tamil Nadu
Rep. By its Secretary,
Home and Prohibition Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009
2. The District Magistrate & District Collector,
Collector's Office
Vellore, Vellore District.
3. The Inspector of Police,
Vaniyambadi Taluk Police Station,
Vaniyambadi, Vellore District. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records from the file of the second respondent relating to the detention order made in C3/D.O.No.33/2019 on 29.04.2019 and set aside and produce the detenu V.Saravanan, aged 38 years, Son of Vishwanathan, Mariyamam Kovil Street, Kizh Pallipattu Village, Jafrabad Post, Vaniyambadi Taluk, Vellore District before this Court, presently lodged at Central Prison, Vellore and set him at liberty.

For Petitioner : Mr.V.Ashok Kumar

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu V.Saravanan, Son of Vishwanathan, male, aged 38 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.33/2019 dated 29.04.2019, holding 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 appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 5 of the grounds of detention are extracted below:

"5.....I am aware that Thiru Saravanan has filed a bail application in ground case in Vaniyambadi Taluk Police Station Crime No.164/2019, u/s. 376(i), 362, 506(ii) IPC r/w Sec. 4 of Protection of Children from Sexual Offences Act, 2012 before the Court of the Magalir Neethi Mandram (Fast Track Mahila Court), Vellore in CMP No.386/2019 and the same was dismissed on 10.04.2019. As far as the ground case is concerned, in a similar case registered at Arcot Town Police Station Cr.No.303/2018, under Section 294(b), 324, 506 (i) IPC r/w Sec 8 of Protection of Children from Sexual Offences Act 2012 bail was granted to the accused Thiru Manikandan @ Appu by the Fast Track Mahila Court, Vellore in CrI.M.P.No.345/2018 on 14.06.2018. As bails are being granted by courts in such cases, there is most likely that he (Thiru. Saravanan) may come out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a similar case registered at Arcot Town Police Station Cr.No.303/2018, under Section 294(b), 324, 506(i) IPC r/w Sec 8 of Protection of Children from Sexual Offences Act 2012 bail was granted to the accused Thiru Manikandan @ Appu by the Fast Track Mahila Court, Vellore in CrI.M.P.No.345/2018 on 14.06.2018 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 294(b), 324, 506(i) IPC r/w Sec 8 of Protection of Children from Sexual Offences Act 2012 whereas the offences involved in the ground case are under Sections 376(i), 362, 506(ii) IPC r/w Sec. 4 of Protection of Children from Sexual Offences Act, 2012. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. However, we make it clear that we are concerned with the legality of the detention order passed. Therefore, it is for the jurisdictional Court to consider the pending bail application on its own merit and in accordance with law.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.33/2019 dated 29.04.2019, passed by the second respondent is set aside. The detenu, namely, V.Saravanan, Son of Vishwanathan, male, aged 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

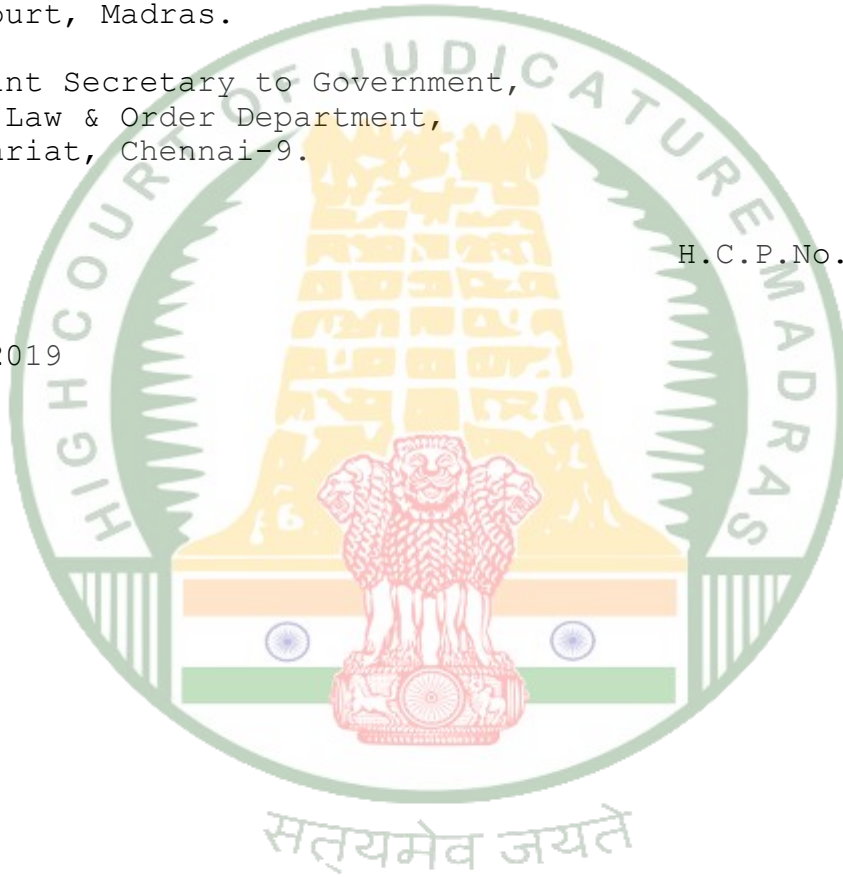
1. The Secretary,
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5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary to Government,
Public Law & Order Department,
Secretariat, Chennai-9.

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