

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No.1154 of 2019

Sasikala

... Petitioner

-vs-

1.State of Tamil Nadu
rep. by The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 7.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the detention order in No.103/BCDFGISSSV/2019 dated 22.02.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Gandhi, son of Narasimman, aged about 45 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Gandhi, S/o.Narasimman, aged about 45 years the detenu herein at liberty.

For Petitioner : Mr.C.Umameswaran

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 Gandhi, son of Narasimman, aged about 45 years. The detenu has been detained by

the second respondent by his order in No.103/BCDFGISSSV/2019 dated 22.02.2019, 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 appearing 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.The detenu is involved in a case under the Protection of Children from Sexual Offences Act, 2012, which is the ground case. This is a solitary case.

4.Learned counsel appearing for the petitioner submitted that apart from being solitary case, a similar case relied upon by the Detaining Authority is not similar. Secondly, in the said case, bail was granted by the High Court whereas in the case on hand, no bail application has been filed.

5.Learned Additional Public Prosecutor appearing for the State would submit that considering the nature of offence, the petition will have to be dismissed. On a query, the learned Additional Public Prosecutor further submitted that investigation is over and final report is filed.

6.On the last occasion, we directed the learned Additional Public Prosecutor to get instructions on the similar case in which the final reports have been filed. On instructions, the learned Additional Public Prosecutor furnished the particulars of the Final Reports filed in Crime Nos.324 of 2016, 12 of 2018, 2 of 2019, 9 of 2019, 11 of 2019, 12 of 2019 and 368 of 2019 before the Mahila Court, Chennai, which are not taken on file.

7.The Apex Court has already considered the issue of expediting the trial with respect to cases coming under the POCSO Act. Inasmuch as the offences are against the victims who are minor children, certainly urgency will have to be shown by the Courts. We may note that even the Act envisages timely justice.

8.In such view of the matter, we are of the view that it would be appropriate to direct the Mahila Court, Chennai, to take the above said cases as furnished by the learned Additional Public Prosecutor on file and thereafter frame charges. Needful will have to be done within a period of four weeks from the date of receipt of a copy of this order.

9. Insofar as the merits of the case are concerned, inasmuch as the similar case relied upon in W5 All Women Police Station Crime No.1/2017 for the offence under Sections 366 (A) IPC and Section 6 of POCSO Act, 2012 does not tally with the ground case which was registered for the offence under Sections 4 and 8 of POCSO Act, 2012, certainly there is a non-application of mind on the part of detaining authority in considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.103/BCDFGISSSV/2019 dated 22.02.2019, passed by the second respondent is set aside. The detenu, namely, Gandhi, son of Narasimman, aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai - 7.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government, Public (Law & Order),
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Umameswaran, Advocate sr.74568

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spd(co)
nr 17/10/2019