

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1744 of 2019

Sathish Kumar

... Petitioner

-vs-

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Kanchipuram District,
Kanchipuram. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the detention order vide BCDFGISSSV No.42/2019 dated 11.06.2019 on the file of the second respondent and quash the same and produce the petitioner's mother Arockiya Mary @ Velangkanni W/o. Kanikkairaj, aged 44 years, confined at Special Prison for Women, Vellore before this Court and set her at liberty.

For Petitioner : Mr.S.N.Arunkumar

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor

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ORDER

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

The petitioner is the son of the detainee, Arockiya Mary @ Velangkanni W/o. Kanikkairaj, female, aged 44 years. The detainee has been detained by the second respondent by his order in BCDFGISSSV No.42/2019 dated 11.06.2019, holding to be a

"Immoral Traffic Offender", as contemplated under Section 2(g) 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 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 offence 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 Tmt. Arockiya Mary @ Velangkanni W/o Kanikkairaj was arrested in Cr.No.06/2019 of All Women Police Station Kancheepuram on 27.04.2019 produced before the Mahila Court, Chengalpattu on 28.04.2019 ordered to be remanded under judicial custody upto 10.05.2019 and lodged at Special Prison for Women, Vellore as a remand prisoner. Her remand period was periodically extended upto 21.06.2019. She has filed a bail petition in the above case before the Mahila Court, Chengalpattu on 30.05.2019 in CrI MP No.1049/2019 and the same was pending before the Court. If she will be released on bail again she will indulge in the activities prejudicial to the maintenance of public peace and public order. However, in similar case, similar accused was already released on bail in the same nature of offence through appropriate court i.e.,

In Maraimalai Nagar Police Station Cr.No.344/2017 u/s Girl Missing @ 363, 366(A), 376(1) IPC r/w 5(e) of Protection of Children from Sexual Offence (POCSO) Act, 2012 @ 363, 366(A) IPC and 6 r/w 5(e) of POCSO Act, 2012 the accused Thiru. Gopalakrishnan @ Kicha S/o. Marimuthu was released on bail through Mahila Court, Chengalpattu in CrI.M.P.No.839/2017 on 07.07.2017. Hence I infer that there is real possibility of coming out on bail in above Cr.No.06/2019 since in similar cases bails are granted by the courts after lapse of time."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered in Maraimalai Nagar Police Station Cr.No.344/2017 u/s Girl Missing @ 363, 366(A), 376(1) IPC r/w 5 (e) of Protection of Children from Sexual Offence (POCSO) Act, 2012 @ 363, 366(A) IPC and 6 r/w 5(e) of POCSO Act, 2012 the accused Thiru. Gopalakrishnan @ Kicha S/o. Marimuthu was released on bail through Mahila Court, Chengalpattu in CrI.M.P.No.839/2017 on 07.07.2017 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.06/2019 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 u/s Girl Missing @ 363, 366(A), 376(1) IPC r/w 5(e) of Protection of Children from Sexual Offence (POCSO) Act, 2012 @ 363, 366(A) IPC and 6 r/w 5(e) of POCSO Act, 2012 whereas the offences involved in the ground case are under Section 6 r/w 5(e), 17 of POCSO Act, 2012 @ 365, 366, 366-A, 370(4), 373, 376(1) IPC and 4, 6 and 17 of POCSO Act, 2012 and 3(2)(a), 4(1) and 6 of Immoral Traffic (Prevention) Act, 1956. 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. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.42/2019 dated 11.06.2019, passed by the second respondent is set aside. The detenu, namely, Arockiya Mary @ Velangkanni W/o. Kanikkairaj, female, aged 44 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-)

// True Copy//

Sub Assistant Registrar

mmi/ssm

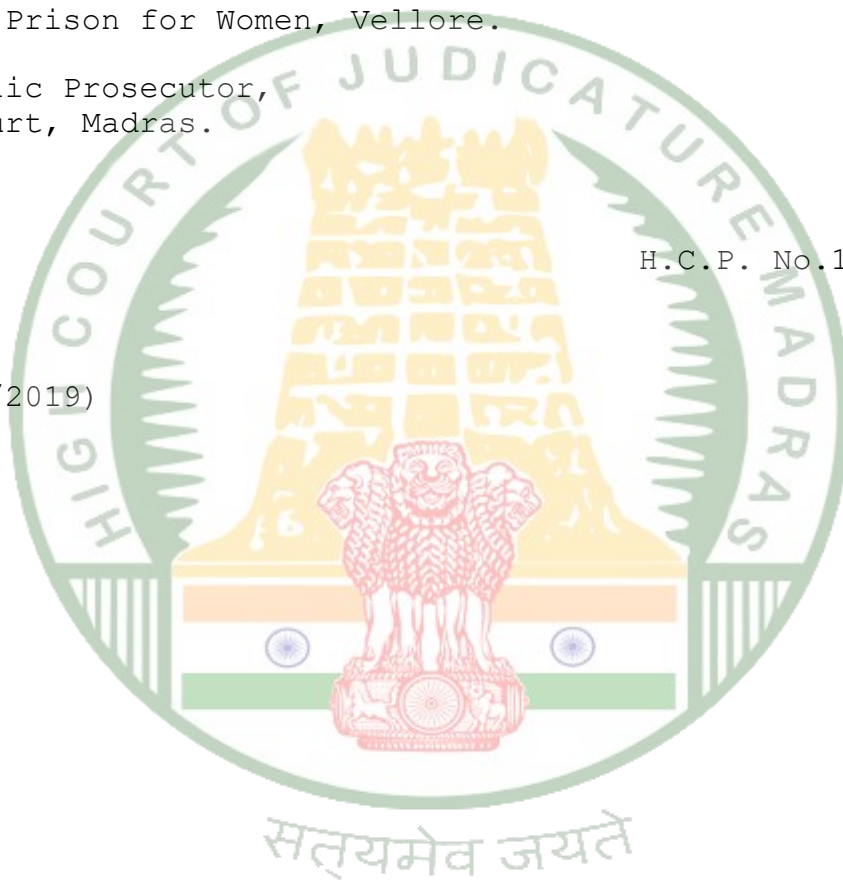
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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanchipuram District,
Kanchipuram.
- 3.The Superintendent,
Special Prison for Women, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P. No.1744 of 2019

RR(CO)
CSR(09/12/2019)



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