

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2787 of 2018

Kalaiselvi Petitioner/Wife of detenu

-vs-

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector & District Magistrate,
Perambalur District, Perambalur.
- 3.The Inspector of Police,
Perambalur All Women Police Station,
Perambalur District. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in Cr.M.P.No.31/2018 dated 29.10.2018 passed by the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce Suresh Kumar, Son of Angamuthu, aged about 31 years, who is now confined at Central Prison, Tiruchirapalli, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.D.Veera Kumar

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz. Suresh Kumar, Son of Angamuthu, aged about 31 years and challenging the impugned order of detention dated 29.10.2018 in

Cr.M.P.No.31/2018 passed by the second respondent, in and by which the detenu has been branded as a "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982, came forward with this Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 29.10.2018 would disclose that the order of detention came to be passed on a solitary incident. A written complaint dated 08.10.2018 was lodged by Selvi Malini, a resident of South Street, Nakkaselam Village, Alathur Taluk, Perambalur District stating among other things that she is having two sisters and they are studying in Government Higher Secondary School at Nakkaselam and one of the sisters, aged about 16 years informed that the detenu had committed the act of physical abuse and raped her. The victim girl was taken to the Government Hospital, Thuraiyur and she was referred to the Government Headquarters Hospital, Tiruchirappalli for treatment. The Inspector of Police, All Women Police Station, Perambalur, on the basis of the complaint, registered a case in Crime No.25 of 2018 for the offences under Section 451 IPC and Sections 3 and 4 of Protection of Children from Sexual Offences Act [POCSO Act], 2012. The detenu was arrested on 09.10.2018 at 9.00 hours and produced before the Court of Additional Mahila Judge, Perambalur and ordered to be remanded to judicial custody till 12.10.2018 and the remand period was extended till 03.11.2018.

3. The second respondent/Detaining Authority, on consideration of the materials, has derived the subjective satisfaction that on seeing the magazines and news dailies, the public, more particularly women folks felt insecurity and feared about their female children and in order to defuse tension and to create confidence in the minds of all sections of people, steps to be taken to curb the illegal activities of the detenu and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.5 of the grounds of detention and would submit that the detenu is in remand in connection with the solitary case / ground case and he has not filed any bail petition so far and the Detaining Authority, in order to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance of public order, has placed reliance upon an order passed by this Court dated 08.09.2014 made in CrI.O.P.No.24365 of 2014 and would further add that the said case cannot said to be identical to the facts of the ground case and as such, the subjective satisfaction derived by the Detaining Authority in

that regard is wholly vitiated and hence, prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents would submit that the Detaining Authority, after due and proper application of mind, had rightly reached the subjective satisfaction and clamped the order of detention and hence prays for dismissal of this petition.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. A perusal and consideration of the materials placed would indicate that the Detaining Authority has derived the subjective satisfaction on the basis of news items that appeared in magazines and news dailies and on account of the same, women folks shocked and felt insecurity and feared about their female children. In the considered opinion of the Court, news items appearing in news dailies cannot be the sole basis for deriving the subjective satisfaction for the reason that a newspaper report is not one of the documents referred to in Section 78(2) of the Evidence Act, by which the allegation of fact can be proved and the presumption of genuineness attached under Section 81 of the Evidence Act to a newspapers report cannot be treated as proof of the facts reported therein. It is also a well settled position of law that the statement of fact contained in newspaper is merely hearsay and therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported [B.Singh v. Union of India (2004) 3 SCC 363].

8. Insofar as deriving of the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance of public order, a perusal of the order passed by this Court dated 08.09.2014 made in CrI.O.P.No.24365 of 2014 would disclose that the material particulars such as age of the victim, age of the offender have not at all been taken into consideration and what was weighed with the mind of the Court was the period of incarceration of the accused concerned. In the considered opinion of the Court, the offences under POCSO Act are very serious in nature and under normal circumstances, it may not be possible for the accused concerned to come out on bail at the earliest and therefore, the order dated 08.09.2014 made in CrI.O.P.No.24365 of 2014, in the facts and circumstances of the case, cannot be said to be a similar case.

9. In the light of the reasons assigned above, this Court is of the considered view that the subjective satisfaction derived by the Detaining Authority in that regard is vitiated.

10. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention passed by the second respondent in Crl.M.P.No.31 of 2018 dated 29.10.2018 is set aside. The detenu viz., Sureshkumar, Son of Angamuthu, aged 31 years, confined at Central Prizon, Tiruchirappalli is directed to be released forthwith unless his custody/detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector & District Magistrate,
Perambalur District, Perambalur.
- 3.The Inspector of Police,
Perambalur All Women Police Station,
Perambalur District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent of Central Prison,
Trichy.
- 6.The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai-9.

H.C.P.No.2787 of 2018

VBA (CO)
CSL/04.06.2019