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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.1714 of 2018

Rajesh

... Petitioner

Vs.

- 1.State of Tamil Nadu,  
Rep. by the Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The District Collector and District Magistrate,  
Kanyakumari District,  
Nagercoil.
- 3.The Superintendent of Prison,  
Central Prison,  
Palayamkottai,  
Tirunelveli.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order passed in P.D.No.60/2018 dated 17.11.2018 on the file of the 2<sup>nd</sup> respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Rajesh, aged about 31 years, S/o.Arjunan, now detained in Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu  
Additional Public Prosecutor

**O R D E R**

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The detenu himself is the petitioner and challenging the legality of the impugned order of detention dated 17.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'Sexual Offender' under the provisions of section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum



Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present habeas corpus petition.

2.A perusal of the grounds of detention would disclose among other things that the impugned order of detention came to be passed on a solitary incident. In paragraph 3 of the grounds of detention, it is averred among other things that on 11.10.2018 at 19.00 hours, the Sub-Inspector of Police, Puthukkadai Police Station got an intimation from the Medical College Hospital, Asaripallam and rushed to the hospital and recorded the statement from the victim girl Vibisha, aged 22, who disclosed about the attempts made to molest her sexually by the detenu and her committing self immolation. The Judicial Magistrate has also recorded her dying declaration. Without responding to the treatment, the victim girl died on 19.10.2018. Initially, based on the statement of the victim girl, the case was registered by Puthukkadai Police Station for the commission of offences u/s. 451, 354A, 309 I.P.C. and on the demise of the victim girl it was altered into Sections 511, 306 r/w 34, 212 I.P.C. The detenu surrendered before the Court of Judicial Magistrate No.II, Kuzhithurai on 23.10.2018 and ordered to be remanded to judicial custody till 02.11.2018 and he was also interrogated after obtaining police custody. The Detaining Authority on being satisfied that the activities of the detenu were prejudicial to the maintenance of the public peace and order, branded him as a 'Sexual Offender' and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

3. 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 custody in connection with the ground case and he is yet to file a bail application and in order to derive the subjective satisfaction that there is real and imminent possibility of the detenu coming out on bail and will indulge in such activities, which are prejudicial to the maintenance of public health and public order, the detaining authority has relied on the order granting anticipatory bail by this Court in CrI.O.P.(MD) No.9127 of 2016 dated 20.06.2016. By drawing the attention of this Court to page No.257 of the booklet, it is the submission of the learned counsel for the petitioner that in the said case anticipatory bail was granted taking into consideration the fact that under the pretext of marriage, the concerned petitioner has physical relationship with the victim girl. But in the case on hand, it is not so and therefore, it cannot be considered as a similar case and therefore, he prays for quashment of the impugned order of detention.

4.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State, by drawing the attention of this Court to the counter affidavit, would submit that taking into account the gravity of the offence, which would have an effect on



the society, the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

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

6. As rightly pointed out by the learned counsel for the petitioner, the order granting anticipatory bail cannot be considered as a similar case with the case on hand for the reason that in the said case under the pretext of marriage the concerned petitioner had physical relationship with the victim but in this case because of the attempt made by the detenu to commit rape upon the victim girl, she committed suicide by self immolation. Hence, on the sole ground impugned order of detention warrants interference.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The District Collector, Kanyakumari District in P.D.No.60 of 2018 dated 17.11.2018. Consequently, the detenu, namely, Rajesh, son of Arjunan, aged about 31 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

sj

To

1. The Principal Secretary to the Government,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009.
2. The District Collector and District Magistrate,  
Kanyakumari District,  
Nagercoil.
3. The Superintendent of Prison,  
Central Prison,  
Palayamkottai,  
Tirunelveli.



4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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**H.C.P(MD)No.1714 of 2018**  
**04.06.2019**

PM(CO)  
TR (18.06.2019) 4P 5C