

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.234 of 2020

Ramya

... Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of
Police (Goondas Section),
Vepery,
Chennai - 600 007.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records relating to the Petitioner's husband detention order under Tamil Nadu Act 14 of 1982 vide detention order, dated 30.12.2019 on the file of the second respondent herein made in proceedings Memo No.896/BCDFGISSSV/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Balaji, S/o.Sekar, aged 38 years before this Court and set the Petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Chennai.

For Petitioner : Ms.S.Vedavalli.

For Respondents: Mr.R.Prathap Kumar,
Additional Public Prosecutor.

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.The wife of the detenu has filed this petition challenging the detention order passed against the detenu in proceedings Memo No.896/BCDFGISSSV/2019 dated 30.12.2019, branding him as 'Sexual Offender' under Section 2 (ggg) of Tamil Nadu Act 14 of 1982 by the second respondent .

3.The case was registered against the detenu in Crime No. 6 of 2019 on the file of the All Women Police Station, T. Nagar under Sections 375, 376, 383, 386, 387, 503 of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. In this case, the allegation against the detenu is that he has sexually assaulted the 13 year old school going girl child with the connivance of tuition teacher who is her paramour. The facts of the case has been narrated in para no. 2 of the grounds of detention order which is extracted as follows:-

"2.The ground on which the aforesaid detention has been made is as follows:-

On 05.11.2019 Thiru K. Parthasarathy, residing at No. 32, Neelakanda Metha Street, Thanikachalam Road, T. Nagar, Chennai 17, behind Raj Park Hotel appeared before the Deputy Commissioner of Police, CWC, Thousand lights, Chennai and lodged a complaint, against Selvi. Sanjana and Thiru Balaji alleging that Selvi. Sanjana, who took tuition for his daughter Ms. Sai Keerthana had threatened his daughter to bring money, foreign currencies and jewels from her house and extracted case and jewels, also she had compelled her to have dating with her body friend Thiru Balaji and he had forcibly had intercourse with his daughter and requested to take action against both of them.

In his complaint, Thiru Parthasarathy had stated that his daughter Ms. P. Sai Keerthana, aged 14 years was undergoing with one Selvi. Sanjana Selvaraj, residing at Block B, 1st Floor, 1st House, Ansari Flats, Opposite to Kalyana Maalai in Ramasamy Street, T. Nagar, Chennai 600 017. On 26.10.2019 Thiru Parthasarathy noticed that his daughter was having lot of disturbance in her mind with shivering. When asked, she informed that she was being tortured by her tuition teacher Selvi. Sanjana threatening her to steal money from their house and send it through her tuition mates, keeping the same inside the books. When continuously asked her, why she was doing that, Ms. Sai Keerthana had stated that for the past one year and 5 months she was being tortured by her tuition teacher more specifically from 10.07.2018, when she was threatened by her tuition teacher to cooperate with somebody for a dating, if refused, her tuition teacher would commit suicide leaving a suicide note

that Ms. Sai Keerthana is responsible for her death. Further, on 10.07.2018, Selvi. Sanajana and Thiru Balaji Sekar took Ms. Sai Keerthana to an unknown place and leaving Thiru Balaji Sekar and Ms. Sai Keerthana in a room, Selvi. Sanajana stayed back in the hall of that place. When Ms. Sai Keerthana in the room for more than 1 hour and during the said time he had informed her that within ½ hour his blood will flow into her body and Ms. Sai Keerthana didn't understand what was happening to her, as she was just 13 years old child, at that time. After that, while dropping Ms. Sai Keerthana at her house, both Selvi. Sanajana and Thiru Balaji Sekar threatened her that she should not disclose the happenings, if discloses to anyone, Ms. Sai Keerthana will commit suicide with a written statement that Ms. Sai Keerthana is responsible for her death and it will lead to the arrest of her parents. Due to the threat, Ms. Sai Keerthana didn't open her mouth and didn't inform whatever was happening to her from 10.07.2018. From that day onwards, Selvi. Sanajana started to threaten Ms. Sai Keerthana to bring money, jewel or foreign currency from her home, if not, she will show the video to her parents and on seeing it, her parents will definitely commit suicide. Further, Selvi. Sanajana criminally intimidated Ms. Sai Keerthana that, if she shows the video, it will cause a very serious injury to her parents' reputation and they will definitely end up in death and by this way she had extorted about 13,000 Saudi Riyals (equivalent to Rs.2,60,000/-) Indian Rupees 50,000/- and about 30 sov gold jewels and requested to take proper action against Selvi. Sanajan and Thiru Balaji Sekar u/s 375, 376, 383, 386, 387, 503 IPC and POCSO Act 2012, for her well planned extortion, threatening his daughter to date with her boy friend and further threatening to show the video and spoil their family reputation.

Tmt. Josephine Lourdu Mary, Inspector of Police, W25 All Women Police Station, T. Nagar who received the complaint through proper channel, registered a case in W25 All Women Police Station, T. Nagar Cr. No. 06/2019, u/s 375, 376, 383, 386, 387, 503 IPC & Sec. 4 & 6 of Protection of Children from Sexual Offences Act - 2012 on 05.11.2019 at 06.30 hrs., and took up investigation of the case.

The Inspector of Police examined the complainant Thiru Parthasarathy and victim child Ms. Sai Keerthana and recorded their statements.

Perusal of the statements of the above witnesses revealed that the accused Selvi. Sanjana, being a

tuition teacher extorted jewels and cash from the victim child also she had made the victim girl to have dating with her paramour and on 10.07.2018 both Selvi. Sanjana and her paramour Thiru Balaji took the victim child to a hotel in ECR. Further, Selvi. Sanjana left the victim child and Balaji in a room where the accused Thiru Balaji forcibly had intercourse with the victim girl and she has taken the video, Selvi. Sanjana again started to threaten the victim child to bring cash and jewels from her house.

During the course of investigation, while searching for the accused, on 05.11.2019 at 11.30 hrs., the Inspector of Police found Selvi. Sanjana near T. Nagar Railway Station and after informing reasons, arrested and examined her. Her voluntary confession statement was recorded in the presence of witnesses. In her confession statement, Selvi. Sanjana admitted that she had affair with Thiru Balaji and since Thiru Balaji compelled her to arrange dating with Ms. Sai Keerthana, she agreed. On 10.07.2018 she, under the guise of project, took Ms. Sai Keerthana to Shrine Velankanni Global School and from there both Selvi. Sanjana and Thiru Balaji took Ms. Sai Keerthana to Hotel Asura at ECR, left them in a room and she stayed back in the hall. On their coming out, Ms. Sai Keerthana cried and informed that she feels heavy pain and Selvi. Sanjana threatened her not to reveal this to anyone. If said, she will commit suicide with a note that Ms. Sai Keerthana is responsible for her death and it would lead to arresting her parents. Later, she started to black mail Ms. Sai Keerthana to bring cash and jewels from her house, failing which, she will release the video and ruin their family's reputation and on seeing the video her parents would definitely commit suicide. Further, she informed that she has pledged the jewels, taken from the victim child Ms. Sai Keerthana, with Muthoot Fincorp, T. Nagar. Based on her confession statement, the Inspector of Police seized (1) Muthoot Fincorp Limited receipt for loan no.F72666 for pledging bangles-2, Mala-1, valued to Rs.1,03,700/- and (2) Muthoot Fincorp receipt for loan no.F7296 for pledging necklace - 1, Ring-3, valued to Rs.70,000/- produced by Selvi. Sanjana from her house at No.11/14, Ansari Flat, First Floor, Ramasamy Street, T. Nagar, under cover of mahazar, in the presence of witnesses.

Based on accused Selvi Sanjana confession statement, on 05.11.2019 at 15.30 hrs., the Inspector of Police arrested Thiru Balaji near Urapakkam Railway Station and examined him. His voluntary confession

statement was recorded in the presence of witnesses. In his confession statement, Thiru Balaji admitted that while he was staying with his wife in a rented house at T. Nagar, to take treatment for his wife, developed affair with Selvi. Sanajana. Initially Selvi. Sanjana refused but later she agreed and he asked her to give a child for him and they had physical relationship. While Ms. Sai Keerthana was going for tuition to Selvi. Sanaja's house, he saw her and had an eye over her. On one day, while she was going for tuition, in the stairs, he hugged and kissed Ms. Sai Keerthana. Further, he started to avoid Selvi. Sanjana and when she questioned, Thiru Balaji compelled her to arrange a dating with Ms. Sai Keerthana. Hence, Selvi. Sanajan due to the affairs over with me and not willing to separate with me, agreed to his demand. On 10.07.2018, Selvi. Sanajana informed Ms. Sai Keerthana's mother that she is taking Ms. Sai Keerthana to Shrine Velankanni Global school. Accordingly, when Ms. Sai Keerthana was dropped at the entrance of the school by her mother, he and Selvi. Sanajana took Ms. Sai Keerthana in a car to Hotel Asura at ECR wherein Selvi. Sanaja pushed Ms. Sai Keerthana in a room along with me and she stayed back in the hall. In the room, he undressed Ms. Sai Keerthana and forcibly had intercourse with her, without responding to her scream due to unbearable pain and bleeding. On their return, when Ms. Sai Keerthana informed this to Selvi. Sanjana and cried, she threatened Ms. Sai Keerthana not to reveal this to anyone and both of them dropped Ms. Sai Keerthana at her house. Later, he along with his wife left to Guduvanchery. Further, he admitted that on 03.11.2019 while he, along with his wife and child was proceeding to Urupakkam market in a motorcycle, a dog suddenly crossed due to which they fell down and he sustained injuries abrasions over his right elbow and right knee. Further, the intimation about the arrest of Selvi. Sanajana was given to her father Thiru Selvaraj and Thiru Balaji was given to his father Thiru Sekar, on the same day, in person.

Later, on 05.11.2019 Selvi. Sanjana and Thiru Balaji were produced before the Special Court for Exclusive Trial of cases under POSCO Act, Chennai who ordered the accused to be remanded till 19.11.2019 and lodged Thiru Balaji at Central Prison, Puzhal, Chennai and Selvi. Sanjana at Special Prison for Women, Puzhal, Chennai as remand prisoner.

The Inspector of Police filed petitions before the Mahila Court, Chennai requesting permission to

conduct medical examination for the accused Thiru Balaji. On 14.11.2019 Thiru Balaji was sent to Govt. Omandurar Multi Speciality Hospital, Chennai for conducting medical examination. The doctor, who examined Thiru Balaji, has opined that there is nothing to suggest that he is an impotent and nothing to suggest that he cannot perform sexual intercourse.

On 18.11.2019 the Inspector of Police filed an affidavit before the Mahila Court, Chennai seeking two days police custody for the accused Selvi. Sanjana and the learned Sessions Judge granted two days police custody i.e. from 18.11.2019 at 17.00 hrs., to 19.11.2019 at 17.00 hrs. During police custody, Selvi. Sanjana was examined and her further confession statement was recorded in the presence of witnesses. In her further confession statement, Selvi. Sanjana in continuation to her earlier statement, had further stated that she received Saudi Riyals, valued to Rs.85,500/- and also pledged the jewels received from the victim with Muthoot Fincorp, and she spent the money, along with Thiru Balaji lavishly. On one occasion when she went to pledge two bangles and a chain, brought by Ms. Sai Keerthana, it was found to be guilt and she was scolded and sent out not to bring such jewels further. Also she spend the money Rs.60,000/-, received from Ms. Sai Keerthana's father towards her Ph.D., expenses, for her personal use. Based on her further confession statement, the Inspector of Police seized (1) gold bangles-2, (2) gold maalai-1, (3) gold necklace - 1 and (4) gold rings - 3, identified and produced by Selvi. Sanjana from Muthoot Fincorp at No.19, Dhandapani Street, T. Nagar, under cover of mahazar, in the presence of witnesses.

Later, on 19.11.2019, after police custody, Selvi. Sanjana was produced before the Special Court for Exclusive Trial of cases under POCSO Act, Chennai who ordered the accused to be remanded till 03.12.2019 and lodged at Special Prison for Women, Puzhal, Chennai as remand prisoner. Their remand was extended periodically till 31.12.2019.

During the course of investigation, the Inspector of Police has altered the sections in to u/s 366(A), 389, 503 IPC & Sec. 4 & 4 r/w. 17 of Protection of Children from Sexual Offences Act -2012.

Investigation of the case is not yet over. The offence under sections 366(A), 389 & 503 IPC relates to procreation of minor girl, extortion by putting aperson in fear of accusation of an offence and criminal intimidation, as such punishable under

chapters XVI, XVII and XXII and the offences u/s 4 & 4 r/2. 17 of Protection of Children from Sexual Offences Act 2012 relates to aggravated penetrative sexual assault, as such punishable under chapter IIA and IV of the said code.

It is a crime against the hold body of children and the soul of the society and such a crime is aggravated by the manner in which it has been committed. Rape or sexual assault is a crime, not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. It is to be kept in mind that an offence against the body of women lowers her dignity and mask her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social media. In the present case, the 14 yrs old victim child, who does not know what happened to her , possibly would be deprived of the dreams of "Springs of life" and might be psychologically compelled to remain in the "Torment of Winter" when she suffers, the collective at large also suffers.

Hence, I am satisfied that Thiru Balaji, in the ground case, along with his paramour took the victim child into a hotel room and had committed a heinous brutal sexual assault on the victim, without hearing her scream due to unbearable pain and bleeding, and thereby acted in a manner prejudicial to the maintenance of public order and also acted in a manner which will destroy the society's normal life and as such he is a Sexual Offender as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982. By committing the above described grave crime against the victim child, he has created alarm and a feeling of insecurity in the minds of the women and girl children of the area and thereby acted in a manner prejudicial to the maintenance of public order."

4.The learned Counsel appearing for the Petitioner submitted that the detenu was arrested on 05.11.2019 whereas, the detention order was passed only on 30.12.2019. Hence, there is a delay in passing the detention order. Secondly, there was also a delay in considering the representation sent on behalf of the detenu dated 27.01.2020. Thirdly, copies of the similar case stated in the grounds of detention order has not been supplied to him. Therefore, the detention order is vitiated and he seeks for allowing this petition.

5. However, the learned Additional Public Prosecutor submitted that the facts of the case would shock anyone as the minor child who was 13 years old was sexually abused by the paramour of the tuition teacher. Though there is a delay in passing the detention order and on considering the representation sent on behalf of the detenu, it is the administrative delay on the part of the detaining authority as they are involved in various other official works vested with them and the said delay could be explained. Hence, there is no deliberate delay on the part of the detaining authority in passing the detention order and in considering the representation sent on behalf of the detenu and in other words, the delay is neither wilful nor wanton. Therefore, the detention order should not be quashed. Regarding the fact that the copies of the similar case has not been supplied to the detenu is concerned, he would submit that no prejudice is caused to the detenu merely because of non-supply of the similar case documents to him. Therefore, he opposed for allowing this petition.

6. Heard Ms.S.Vedavalli, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

7. With regard to the ground raised by the learned Counsel appearing for the Petitioner that there was a delay in passing the detention order and the representation sent on behalf of the detenu has not been considered in time, it is brought to the notice of this Court that there is no deliberate delay on the part of the detaining authority in disposing of the representation and in other words, the delay is neither wilful nor wanton. With regard to the ground raised by the learned Counsel appearing for the petitioner that the copies of the similar case has not been supplied to the detenu, this Court is of the view that no prejudice would be caused to the detenu because of the non-supply of the similar case documents. Therefore, the contentions of the learned Counsel appearing for the petitioner are rejected.

8. Further, as laid down by the Hon'ble Supreme Court in Union of India and Another -vs- Dimple Happy Dhakad reported in '2019 SCC OnLine SC 875' it has been held that each case has to be decided based on the gravity of the offence and the facts of the case and the relevant Paragraph of the said Judgment is usefully reproduced as follows:

"The court must be conscious that the satisfaction of the detaining authority is "subjective" in nature and the court cannot substitute its opinion for the

subjective satisfaction of the detaining authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. By various decisions, the Supreme Court has carved out areas within which the validity of subjective satisfaction can be tested. In the present case, huge volume of gold had been smuggled into the country unabatedly for the last three years and about 3396 kgs of the gold has been brought into India during the period from July 2018 to March 2019 camouflaging it with brass metal scrap. The detaining authority recorded finding that this has serious impact on the economy of the nation. Detaining authority also satisfied that the detenues have propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detenues, the detaining authority satisfied itself as to the detenues' continued propensity and their inclination to indulge in acts of smuggling in a planned manner to the detriment of the economic security of the country that there is a need to prevent the detenues from smuggling goods. The High Court erred in interfering with the satisfaction of the detaining authority and the impugned judgment cannot be sustained and is liable to be set aside."

9. It is also seen from the records that the detaining authority in Paragraph Number 3 of the detention order, has categorically stated that how he arrived at the satisfaction and came to the conclusion that the Courts are granting bail and there is no prohibition for the detenu to file bail petition in future. Further, in the Judgment of the Hon'ble Supreme Court of India in the case of "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498", it has been held that once the detaining authority is satisfied with the imminent possibility of the detenu coming out on bail, the detention order cannot be vitiated and the relevant Paragraph of the said Judgment is usefully extracted as follows:

"48. Now so far as the reliance upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sravanan (supra) by the learned Counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions applicable to the facts of the case on hand. Even in the case of Rekha (supra), the

decision of the Constitution Bench of this Court in the case of Rameshwar Shaw (supra) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned counsel appearing on behalf of the detenus, in the case of Dimpy Happy Dhakad (supra), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in custody and is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the Detaining Authority."

10. From the above, it is clear that the detaining authority is satisfied that if the detenu is likely to be released from the custody, he is likely to indulge in such prejudicial activities and hence, the detaining authority is justified in passing the detention order. Therefore, the prayer sought for by the petitioner is rejected.

11. Though the prayer sought for by the petitioner is rejected, the matter is kept pending for passing further orders regarding the larger issue.

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-s/d-
Assistant Registrar

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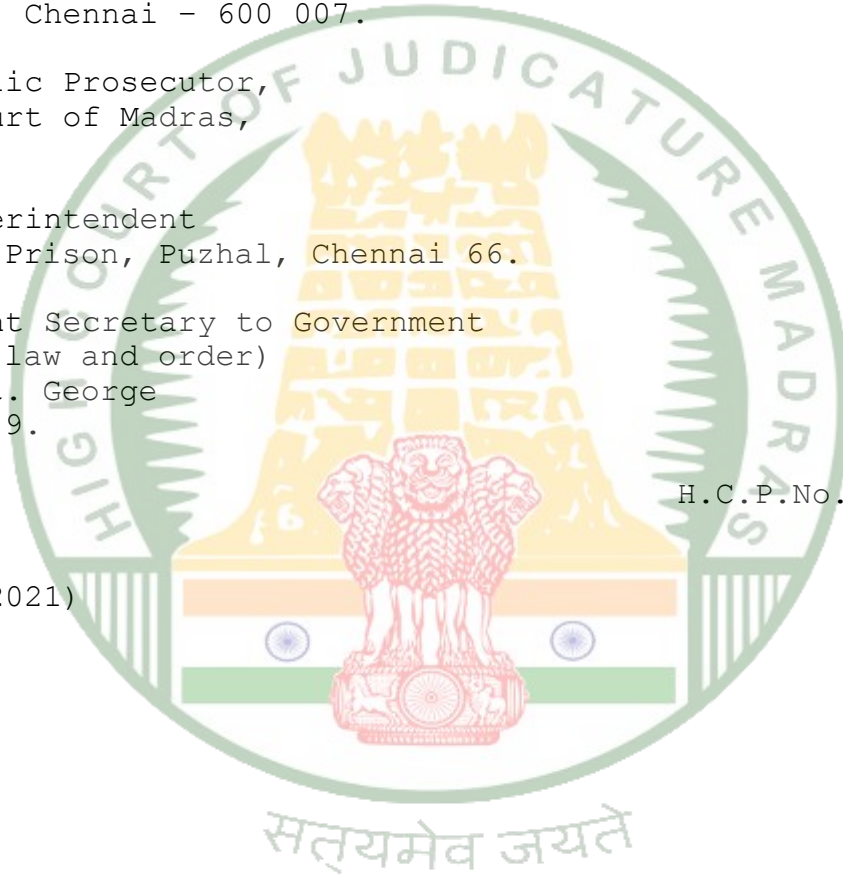
Sub-Assistant Registrar

To

- 1.The Secretary to Government,
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- 2.The Commissioner of Police,
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- 3.The Public Prosecutor,
High Court of Madras,
Chennai.
- 4.The Superintendent
Central Prison, Puzhal, Chennai 66.
- 5.The Joint Secretary to Government
Public (law and order)
Fort. St. George
Chennai 9.

H.C.P.No.234 of 2020

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