

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.251 of 2020

Dharani

... Petitioner

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.

2. The District Collector & District Magistrate,
Vellore District, Vellore - 9.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent 24.01.2020 in C3-D.O.No.07/2020 against the petitioner son Kozhi @ Sakthi @ Sakthivel, Male aged 19 years S/o.Murugan who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel.

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.This Petition has been filed by the wife of the detenu challenging the detention order passed against her husband in C3-D.O.No.07/2020 on 24.01.2020 by the second respondent terming him as 'Sexual Offender' under Section 2 (ggg) of the Tamil Nadu Act 14 of 1982 based on the ground case registered against him for the offence under Sections 394, 397, 366, 376D, 506 (ii) of

Indian Penal Code in Crime Number 39 of 2020. It is also brought to the notice of this Court that he is also a history sheeter and his number is 191 of 2017 and he has also got ten previous cases apart from the ground case.

3.The facts of the ground case is that on 18.01.2020, when one couple went to Vellore Fort Park in the evening, the detenu and his associates have sexually harassed the victim girl and also robbed cash, cell phone and other things from the victims and threatened them. Based on the confession statement one stainless steel button knife, one pair of gold ear rings and clothes worn during the incident by the victim have been seized and therefore, First Information Report has been registered in the said Crime Number 39 of 2020. From the above it is clear that the detenu along with the other accsued has gang raped the victim and based on the said ground case, the detention order has been passed and the said detention order is challenged before this Court.

4.The learned Counsel for the petitioner submitted that the authority in Page No.6 of the detention order has stated that there is an imminent possibility of the detenu coming out on bail and indulging in this kind of activities. However, there are no materials available to come to the satisfaction that there is an imminent possibility of the detenu coming out on bail when there is no bail petition pending. Secondly, he submitted that arrest intimation memo has not been served upon the relatives or friends of the detenu and hence, he seeks to set aside the detention order.

5.However, the learned Additional Public Prosecutor submitted that imminent possibility of the detenu coming out on bail has been stated in Page Number 6 of the detention order and the detaining authority has come to the conclusion that there is a likelihood of detenu coming out on bail. He relied upon the Judgment of the Hon'ble Supreme Court of India in "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498" to stress the point that once the authority is satisfied with the imminent possibility of coming out on bail, the detention order cannot be vitiated. Therefore, he submitted that once the authority came to the satisfaction, the same cannot be set aside or this Court can substitute own decision.

6.With regard to the intimation of arrest which has to be communicated to the close relative or friend of the detenu, the learned Additional Public Prosecutor submitted that Page Number 21 of the booklet contains the arrest intimation memo with the endorsement of the detenu's mother. Therefore, the intimation of arrest has already been given and even that ground is not available to the petitioner and sought for dismissal of this

petition.

7. Heard Mr.S.Senthilvel, 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 records.

8. Though the learned Counsel of the Petitioner contended that there is no imminent possibility of the detenu coming out on bail and there is no satisfaction arrived by the detaining authority and hence, the detention order is vitiated, it is evident from the records especially, Paragraph No.5 of the detention order that the authority has applied his mind and based on the materials placed before him, came to the finding that there is a likelihood of coming out on bail and the detenu would indulge in further illegal activities in future. Hence, it is seen that the satisfaction has been reached based on the materials available and it is seen that the Judgment of the Hon'ble Supreme Court of India in "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498" has been complied with.

9. With regard to the non-service of arrest intimation of the detenu to his close relative or friend, the learned Additional Public Prosecutor submitted that Page Number 21 of the booklet is the arrest intimation memo and the mother of the detenu has received the information of arrest of the detenu. Therefore, the said contention also fails. Hence, the contentions of the learned Counsel for the petitioner cannot be sustained.

10. Accordingly, this Petition is dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

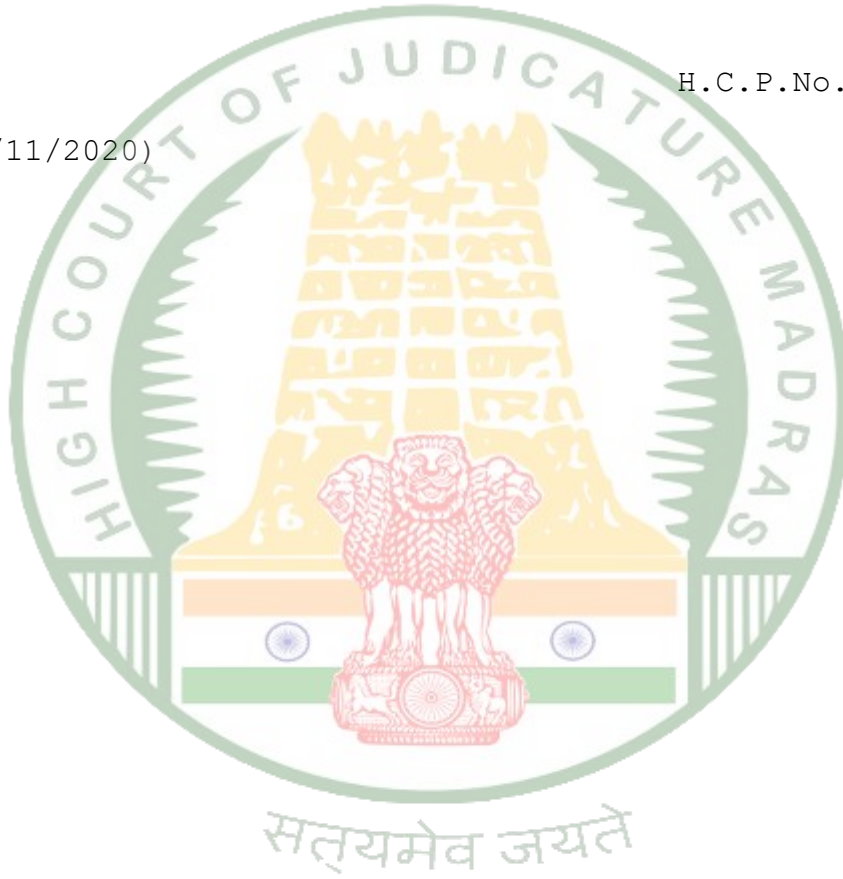
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2. The District Collector & District Magistrate,
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3. The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.
5. The Public Prosecutor,
High Court of Madras,
Chennai.

H.C.P.No.251 of 2020

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