



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM :

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

H.C.P.No.421 of 2020

Jansi Rani

... Petitioner

Vs

1. State of Tamilnadu,
Rep. by the Secretary, Home,
Prohibition And Excise Department,
Fort. St. George, Chennai-600 009.

2. The Commissioner of Police,
Greater Chennai,
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 directing calling for the records relating to the detention order in No.63/BCDFGISSSV/2020, dated 03.02.2020 passed by the second respondent under the Tamil nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Chelladurai S/o. Sundhar aged about 35 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Chelladurai S/o.Sundhar aged about 35 years the detenu herein at liberty.

For Petitioner : Mr.V.Bhagyaraj

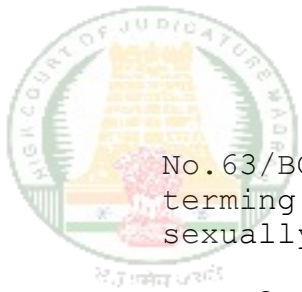
For Respondents: Mr. R. Prathap Kumar,
Additional Public Prosecutor.

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 her husband in



No.63/BCDFGISSSV/2020 dated 03.02.2020 by the second respondent terming him as 'Sexual offender' as he is alleged to have sexually assaulted the minor boy studying 7th standard at Avadi.

3.The facts of the case are that on 18.12.2020, when the minor boy went to write the examination, he was said to have sexually assaulted by the detenu. While sexually assaulting the minor boy, the detenu poured hans in his mouth. When the boy raised alarm, the public caught hold of the detenu and handed over him to the T-7, Tank Factory Police Station. The Inspector of Police, All women police station, registered a case in Crime No.21 of 2019 under Sections 366 and 506(ii) of IPC and Section 5 (m) r/w 6 of Protection of Children from Sexual Offences Act 2012 and the detenu was arrested on 19.12.2019 and the detention order was passed on 03.02.2020. The said order has been challenged before this Court.

4.Heard the parties and perused the materials available on record.

5.It is seen from the affidavit filed in support of this petition that the petitioner has challenged the detention order on various grounds. One of the grounds is that the arrest intimation sent through SMS to the petitioner namely detenu's wife was not communicated and there is no proof to that. However, the learned Additional Public Prosecutor would submit that a statement has been obtained under Section 161 of Cr.P.C from the wife of the detenu and it is also found in the booklet. In view of the fact, the above ground is rejected.

6.It is further stated in the affidavit in ground No.f that the similar case referred in Crime No.1 of 2017 under Sections 366(A) of Indian Penal Code and 4 of POCSO Act, 2012, in which, bail was granted in Crl.O.P.No.8031 of 2017, is not similar in nature. Therefore, it is stated that there is non-application of mind on the part of the detaining authority while passing the detention order as dissimilar case has been referred as similar case. However, the learned Additional Public Prosecutor 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" , in which it has been held that each case has to be decided based on the gravity of the offence. Therefore, from the facts of the case, it is clear that the detaining Authority applied his mind, while passing the detention order and recorded a finding in Paragraph No.3 in Page Number 5 of the detention order that there is a possibility of the individual coming out on bail and indulging in such prejudicial activity in future. When the detaining authority has applied his mind based on the relevant facts and it is of the view that he will indulge in similar activities in future, this Court cannot substitute



its opinion. Therefore, the detention order passed by the Detaining Authority cannot be set aside.

7. Further, it is further stated in Ground No.i that certain pages such as 75, 76, 81, 88, 89, 90, 91 and 92 are not legible. Though it is found to be illegible, there is no prejudice caused to the detenu and it has not been explained as to how prejudice has been caused to the detenu because of non-legibility of those pages. Therefore, based on that ground, the detention order cannot be set aside.

8. Though there is a ground with regard to non-consideration of the representation sent on behalf of the detenu in time, it is submitted by the learned Additional Public Prosecutor that the representation has been considered properly and explanation has been given as to why the representation has been disposed of belatedly. Even if there is any delay, it is neither wilful nor wanton and due to administrative reasons, the delay is caused. Therefore, this Court is convinced the reasons given by the detaining Authority for detaining the detenu under Goondas Act.

9. Accordingly, this Habeas Corpus Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb/tta
To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai-600 007
3. The Public Prosecutor,
High Court of Madras,
Chennai.



4.The Superintendent
Central prison, puzhal , Chennai.

5.The Joint Secretary
Public (law & order)
Fort st. George, Chennai-600 009.

+1cc to M/s.V.Bhagyaraj, Advocate, sr no.32785

H.C.P.No.421 of 2020

CP (CO)
RMP (01/12/2020)