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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice P.T.ASHA

H.C.P. No.2371 of 2019

Malathi

... Petitioner

-vs-

1.The Commissioner of Police,
Commissioner Office,
Greater Chennai,
Vepery, Chennai - 7.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records of the first respondent in connection with the order of the first respondent dated 10.09.2019 in Memo No.577/BCDFG ISSSV/2019, namely Thavamani, son of Ganesan, aged about 46 years as a Sexual Offender Under Tamil Nadu Act 14 of 82 and set aside the same and direct the respondents to produce the body of the said detenu namely Thavamani, Son of Ganesan, now lodged in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Mr.P.Prince Premkumar

For Respondents.. Mr.R.Prathap Kumar,
Addl. Public Prosecutor



ORDER

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

The petitioner is the wife of Thavamani, male, aged 46 years S/o. Ganesan, who is the detenu. The detenu has been detained by the first respondent by his order in Memo No.577/BCDFG ISSSV/2019 dated 10.09.2019, holding him to be a "Sexual Offender", as contemplated under Section 2 (ggg) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 3 of the grounds of detention are extracted below:

"3.I am aware that Thavamani is in remand in W15 All Women Police station Royapuram Crime No.08/2019 and lodged at Central Prison, Puzhal, Chennai as remand prisoner. He has not moved any bail application for W13 All Women Police Station Royapuram Crime No.08/2019. The sponsoring authority has stated that the relatives of Thiru. Thavamani are taking action to take him out on bail in W15 All Women Police Station Royapuram Crime No.08/2019 by filing bail application before the appropriate Court. In a case registered in W4 All Women Police Station Kilpauk, Cr.No.3/2018 u/s 10, 506(ii) of the Protection of Children from Sexual Offences Act, 2012 bail was granted by the Mahila Sessions Court, Chennai in Crl.M.P.No.18753/2018. Hence, I infer that there is real possibility of his coming out on bail in W15 All Women Police Station Royapuram Crime No.08/2019 by filing bail application before the appropriate court, since in similar cases bail is granted by the court after a lapse of time. If he comes out on bail, he will indulge in further activities which will be prejudicial to the



maintenance of public order."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a case registered in W4 All Women Police Station Kilpauk, Cr.No.3/2018 u/s 10, 506(ii) of the Protection of Children from Sexual Offences Act, 2012 bail was granted by the Mahila Sessions Court, Chennai in CrI.M.P.No.18753/2018 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences u/s 10, 506(ii) of the Protection of Children from Sexual Offences Act, 2012 whereas the offences involved in the ground case is u/s 10 of Protection of Children from Sexual Offences Act, 2012. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.577/BCDFG ISSSV/2019 dated 10.09.2019, passed by the first respondent is set aside. The detenu, namely, Thavamani, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/dh

To

- 1.The Commissioner of Police,
Commissioner Office,
Greater Chennai,
Vepery, Chennai - 7.
- 2.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 3.The Public Prosecutor,
High Court, Madras.



4.The Superintendent,
Central Prison, Puzhal,
Chennai.

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5.The Joint Secretary to Govt.,
Public (L&O) Fort.St.George,
Chennai-9.

H.C.P.No.2371 of 2019

SVI (CO)
CB(15/07/2020)