

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2020

CORAM :

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

H.C.P.No.2863 of 2019

M.Parimala

.... Petitioner/Wife of Detenu

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Salem.

.... 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 leading to the petitioner's husband Thiru Mohanraj, son of Ranganathan, male, aged about 42 years is presently lodged in Central Prison at Salem and has been detained under Act 14/82 as a Sexual Offender vide detention order dated 22.11.2019 on the file of the 2nd respondent herein, made in Memo C.M.P.No.49/Sexual offender/Salem City/2019 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central prison, Salem.

For Petitioner : Mr.E.C.Ramesh.

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 Memo C.M.P.No.49/Sexual offender/Salem City/2019 dated 22.11.2019

terming him as 'Sexual Offender' under Section 2 (ggg) of Tamil Nadu Act 14 of 1982 for having videographed his intimate relationship with the victim, who is a deserted woman and allowed his friend, who is arrayed as A2 to copy the video graph and upload the same in the social media.

3.Heard Mr.E.C.Ramesh, learned Counsel for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4.The learned Counsel for the petitioner submitted that the detenu was arrested on 25.09.2019 in Cr.No.413 of 2019 for the offence under Sections 292-A, 294 (b), 506 (i) of Indian Penal Code and subsequently, when he was in custody, ground case has been foisted against him on 03.10.2019 as if the detenu raped the deserted woman and video graphed the said act and allowed his friend who is arrayed as A2 to copy the intimate video graph and upload in social media. He further submitted that the adverse case which has been foisted against him ended in acquittal and also submitted that the detenu was in extra marital relationship with the lady and only by consent, he was in intimate relationship with the said lady. He further submitted that in the adverse case, he was arrested on 25.09.2019 and in the ground case, he was formally arrested on 03.10.2019, whereas the detention order was passed only on 22.11.2019. Hence, there is a delay in passing the detention order and sought for allowing this Petition.

5.However, the learned Additional Public Prosecutor submitted that a serious offence has been committed by the detenu. He raped a deserted lady and video graphed the said act and through his friend, uploaded the same in the social media, causing loss of image and mental agony not only to the lady but also to her son who had only informed the victim lady about the circulation of the video graph. Therefore, no mercy should be shown to him and sought for dismissal of this petition.

6.No doubt, adverse case registered against the detenu had ended in acquittal. It does not mean that the detention order is vitiated. Charges against the detenu is that he lent a sum of Rs.2,000/- to the deserted lady and as she is unable to repay the said amount, the detenu raped her and video graphed the same. The said video graph was uploaded in social media through his friend who has been arrayed as A2 in the case registered against them. It is also seen that the said video graph was viewed by the victim's son who brought to the notice of the victim. Thereafter, a case has been registered against the detenu and his friend in Cr.No.563 of 2019 under Sections 294 (b), 354 (A), 323, 342, 376, 506 (i) Indian Penal Code read with Section 66 Information Technology Act, 2000.

7.It is evident from the records that the detenu was arrested in the adverse case on 25.09.2019 and he was formally arrested in the ground case on 03.10.2019 whereas the detention order was passed on 22.11.2019. The reason given for passing the detention order belatedly is that the police authorities needed time to get the material particulars and documents with regard to the connection of the cases pending against the detenu. Even omission of a single document will vitiate the detention order. Therefore, the police authorities were careful enough to see that all the documents are collected and thereafter, the detention order is passed. Due to that process, the detention order is belatedly passed. Therefore, the delay is neither wilful nor wanton and the explanation has also been given by the learned additional Public Prosecutor stating that after the formal arrest of the detenu on 03.10.2019, he was taken in police custody and confession has been obtained and based on that his cellphone, sim card and other things have been seized and the evidence was collected and thus, there was a delay. Therefore, the grounds raised by the learned Counsel for the petitioner is liable to be rejected.

8.Accordingly, this Petition is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Police,
Salem.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

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VGII(CO)
SP(07/10/2020)