



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.860 of 2019

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Muniyammal, W/o.Selvam

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Police,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the records of the second respondent in detention order in Ref.No.H.S.(M) Confdl No.31/19, setting aside the order of detention passed by the second respondent herein setting the detenu by name, Selvam, aged about 45 years, son of Shanmugam at liberty now detained in Central Prison, Palayamkottai.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.K.Dinesh Babu

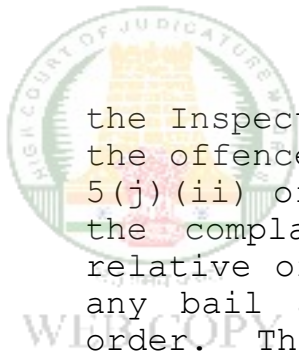
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

Muniyammal, wife of the detenu namely, Selvam, aged about 45 years, has come to this Court, assailing the correctness of the impugned order of detention, dated 11.06.2019, passed by the District Collector and District Magistrate, Thoothukudi District, detaining the detenu Selvam at the Central Prison, Palayamkottai, to produce the detenu and set him at liberty forthwith.

2.Learned counsel appearing for the petitioner submitted that the petitioner is the wife of the detenu, who has been arrested by
<https://hcservices.ecourts.gov.in/hcservices/>



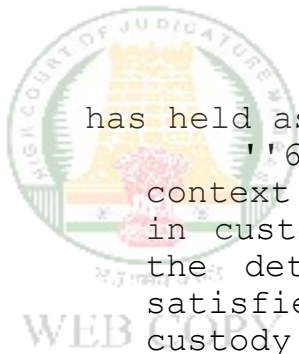
the Inspector of Police, All Women Police Station, Vilathikulam, for the offences punishable under Section 6 r/w. Sections 5(n), 5(l) and 5(j)(ii) of POCSO Act and Section 376 DA IPC on 30.05.2019, based on the complaint preferred by one Selvi. The victim is a close relative of the detenu. After the arrest, the detenu has not moved any bail application till the passing of the impugned detention order. The ground taken in the impugned detention order is that if the detenu comes out on bail, he will indulge in such activities, like committing sexual assault against minor girl children, is unsustainable and bad in law.

3.Learned counsel appearing for the petitioner further argued that only after the impugned detention order was passed on 11.06.2019 by the District Collector and District Magistrate, Thoothukudi District, second respondent herein, statutory bail was granted to the detenu after expiry of 90 days under Section 167 Cr.P.C. More importantly, even on repeated representations made by the detenu, the remand order was not furnished to him. This Court in umpteen number of cases repeatedly held that non-furnishing of requisite documents, more particularly, the remand order, would vitiate the detention order. In the present case, the detenu has been remanded, but the copy of the remand order has not been furnished. Therefore, on the sole ground itself, the detention order is liable to be quashed, he pleaded. Moreover, when there is no bail application filed before impugned detention order was passed, the subjective satisfaction arrived at by the second respondent/detaining authority that there was likelihood of the detenu coming out on bail and if he comes out on bail, he will indulge in such activities like committing sexual assault against minor girl children, shows that there was non-application of mind and therefore, the impugned detention order is liable to be quashed.

4.Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents submitted that admittedly, the detenu was granted statutory bail on the ground that there was no charge sheet filed by the concerned police. But, when the petitioner made a representation dated 04.07.2019, making a request to furnish a copy of the remand order, the petitioner was furnished with remand requisition and remand warrant.

5.Although we agree with the reply given by the learned Additional Public Prosecutor that the form of remand warrant was furnished, which would satisfy the requirement, yet another ground taken by the petitioner is that the detenu has not moved any bail application on the date when the present impugned detention order was passed and the subjective satisfaction arrived at by the detaining authority was non-application of mind.

6.In similar circumstances, the Hon'ble Apex Court in the case of **Huidrom Konungjao Singh vs. State of Manipur and others** reported in 2012 (7) SCC 181 : 2012 (3) MLJ (Crl.) 794 [SC], at Paragraph 6,



has held as under:-

'6. The expression ''compelling reasons'' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.'

7. In the light of the above, there must be cogent material before the detaining authority, on the basis of which, he could have reasons to believe that there was real possibility of his release on bail and further on being released, the detenu would probably indulge in activities, which are prejudicial to the maintenance of public order and if there is no material produced by the sponsoring authority before the detaining authority, the conclusion arrived at by the detaining authority that the detenu may be released on bail on *ipse dixit* of the detaining authority would indicate the want of subjective satisfaction and that would vitiate the detention order. In the present case also, the detention order clearly reflects the non-application of mind, because no cogent material was placed before the detaining authority, hence, the second respondent has passed the impugned order on mere *ipse dixit*, therefore, the detention order stands vitiated.

8. Resultantly, this Petition stands allowed and the impugned detention order in Ref.No.H.S.(M)Confdl No.31/2019, dated 11.06.2019, is quashed. Consequently, the detenu, namely, Selvam, son of Shanmugam, aged about 45 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

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



2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

4.The Joint Secretary to Government,
Public (Law and Order), Fort St.George,
Chennai-9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.RAMASAMY, Advocate (SR-408[F] dated 06/01/2020)

Order made in
H.C.P. (MD) No.860 of 2019
Dated:06.01.2020

SMA/04/03/2020/4P/7C