



WEB COPY

H.C.P.(MD) No.929 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.929 of 2019

Linga Bharathi

... Petitioner

versus

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

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

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

4. The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, calling for the records pertaining to the detention order in H.S.(M) Confdl No.43/2019 dated 29.08.2019 passed by the 2nd respondent, issued against the detainee by name Hari Madhavan @ Appas, S/o. Selvaraj, aged about 24 years and quash the same as illegal and arbitrary and setting him at liberty, now detained at Central Prison, Palayamkottai.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor



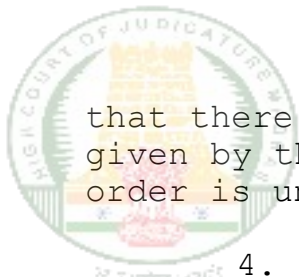
ORDER

[Order of the Court was delivered by **T.RAJA, J.**]

The petitioner herein, who is the wife of the detenu, has filed this petition challenging the correctness of the detention order dated 29.08.2019, passed by the second respondent, branding the detenu as "Sexual Offender" and detaining him at Central Prison, Palayamkottai.

2. Learned counsel appearing for the petitioner submitted that it is a case of solitary in nature. When the detenu, aged about 24 years, is the husband of the petitioner and father of two children, the detenu ought not to have been put under the impugned detention order, branding him as Sexual Offender. Therefore, there is no need or necessity arisen for passing the impugned detention order. Moreover, on the date of passing the impugned detention order, the bail petition filed by the detenu in CrI.M.P.No.3899 of 2019 was pending before the Mahalir Sessions Court, Thoothukudi. But, the second respondent, without knowing the fate of the bail application, hurriedly passed the impugned detention order. Subsequently, the bail application filed by the detenu was dismissed, which clearly shows that the apprehension entertained by the second respondent in the detention order that he was aware of the fact that the detenu has filed the bail application in the ground case registered in Vilathikulam All Women Police Station in Crime No.09/2019 under Section 6 r/w 5(1) of POCSO Act 2012 and 506 (i) IPC in the Court of Mahila Sessions Judge, Thoothukudi, vide CrI.M.P.No.3899 of 2019 on 26.08.2019 and the same was also pending, has disproved not only his assumption, but also his subjective satisfaction for the reason that the bail application filed by the detenu was dismissed subsequently.

3. The second contention raised by the learned counsel appearing for the petitioner is that the second respondent in para 6 of the impugned detention order has wrongly equated the detenu's case with another unconnected case, registered in Thoothukudi All Women Police Station, in Cr.No.20 of 18 for the offence under Section 5(j)(ii), 5(1) and 6 of POCSO Act 2012 and 506(i) IPC, where, bail was granted to one accused, namely, Shivalingam, by the District Mahila Court, Thoothukudi, vide Cr.M.P.No.306 of 2019 dated 24.01.2019. The learned counsel further submitted that in a similar circumstance, dealing with an identical issue, the Hon'ble Apex Court, in the case of **Huidrom Konungjao Singh vs. State of Manipur and others**, reported in **(2012) 7 SCC 181**, has categorically held that merely because, somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Therefore, the detention order passed by the second respondent is untenable and unsustainable. The learned counsel further submitted



that there was a delay of six days in considering the representation given by the petitioner. On that score also, the impugned detention order is untenable.

4. Opposing the above prayer, the learned Additional Public Prosecutor, replying to the delay, stated that when the first representation dated nil and the second representation dated 14.10.2019 were received on 10.09.2018 and 16.10.2019 respectively and remarks were called for and subsequently, after receiving the suitable reply, the said representatives were considered and the same were rejected on 30.09.2010. In the meanwhile, there was a delay of six days, although there were two intervening holidays in between 24.09.2019 till 30.09.2019 and even after excluding the holidays, there was a delay of 4 days only. Though there was a delay in considering the representation, on that score, the impugned detention order need not be interfered with.

5. However, we find it difficult to accept the objection raised by the learned Additional Public Prosecutor, the reason being the detenu was arrested on 03.08.2019, but, the detention order was passed on 26.08.2019, the date on which, the bail application filed by the detenu in CrI.M.P.No.3899 of 2019 before the Mahila Session Court, Thoothukudi, was pending and subsequently, the same was rejected, which clearly shows that the trial Court was not willing to entertain the bail plea. Secondly, the similarity plea, raised in para-6 of the impugned detention order that in a similar case, that was registered in Thoothukudi All Women Police Station in Cr.No.20/18 under Section 5(j)(ii), 5(1) 6 of POCSO Act 2012 and 506 (i) IPC, bail was granted to the accused Shivalingam by the District Mahila Court, Thoothukudi, vide Cr.M.P.No.306/19, dated 24.01.2019, cannot be equated with the case of detenu, the reason being, the Hon'ble Apex Court, in the case of **Huidrom Konungjao Singh vs. State of Manipur and others**, reported in **(2012) 7 SCC 181**, has categorically held that merely because, somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. It is pertinent to extract the paras 15 and 16 of the said Judgment:

"15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely because, somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other accused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained



in the eye of the law.

16. The appeal succeeds and is allowed. The impugned judgment and order is hereby set aside and detention order dated 30.06.2011 is quashed."

6. Following the dictum laid down by the Hon'ble Apex Court as cited supra, the second respondent has wrongly applied his mind and passed the impugned detention order on 29.08.2019, when he was arrested on 03.08.2019, on untenable ground by entertaining wrong apprehension that in view of bail granted to one accused Shivalingam by the District Mahila Court, Thoothukudi, the detenu is likely to come out on bail. Therefore, for want of subjective satisfaction, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, in in H.S.(M) Confdl No.43/2019 dated 29.08.2019. Consequently, the detenu, namely, Hari Madhavan @ Appas, aged about 24 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 (CS III)

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Sub Assistant Registrar(CS)

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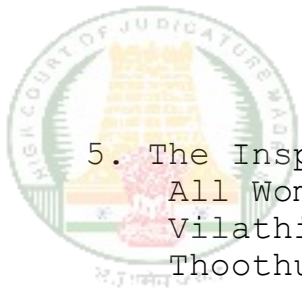
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Palayamkottai,

<https://hcservices.courts.gov.in/hcservices> District.



5. The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.

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

+2 CC to M/s.R.MURUGAN, Advocate (SR-3216[F] dated 27/01/2020)

H.C.P. (MD) No.929 of 2019

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KK/SAR/19.02.2020/5P-9C/