



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.269 of 2021

WEB COPY

Kasithangam

... Petitioner/Mother of the detenu

-vs-

- 1.The Principal Secretary to the Government,
Home, Prohibition and Exercise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in M.H.S. Confidential Number 114 of 2020, dated 04.12.2020 for detaining the detenu under Section 2(ggg) of Tamil Nadu Act 14 of 1982 as a sexual offender and quash the same and direct the respondents to produce the detenu viz., Solairaja, aged about 28 years, son of Thangapandi, Samathanapuram, Nallankulam, Nanguneri Taluk, Tirunelveli District, who is detained in Central Prison, Palayamkottai, Tirunelveli District, before this Court and set him at liberty.

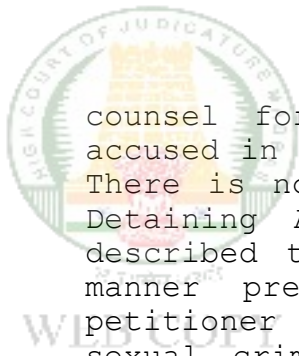
For Petitioner	:	Mr.R.Krishnan
For Respondents	:	Mr.S.Ravi, Standing Counsel for the State

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This habeas corpus petition has been filed by the mother of the detenu, namely, Solairaja, aged about 28 years, S/o. Thangapandi, against the detention order passed by the second respondent, in M.H.S. Confidential Number 114 of 2020, dated 04.12.2020, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act, 14 of 1982.

2.Mr.K.Anand, learned counsel appearing for the petitioner would urge that the detention order impugned in this habeas corpus petition is liable to be quashed, on the sole ground of non-application of mind on the part of the detaining authority. It is the submission of the learned



counsel for the petitioner that the petitioner is implicated as an accused in Crime No.408 of 2020, on the file of Nanguneri Police Station. There is no material to show that he is having adverse cases, but the Detaining Authority, while reaching the subjective satisfaction, has described the detenu is committing sexual crimes and also acting in a manner prejudicial to the maintenance of public order. When the petitioner is having only one case, describing the detenu committing sexual crimes shows lack of application of mind on the part of the detaining authority.

3.Per contra, Mr.S.Ravi, learned Standing counsel appearing for the respondents would submit that taking note of the fact that the detenu was already married and having two children, despite the same, he developed intimacy with the minor girl, the detention order has been passed. According to the learned Standing counsel, there is no illegality and irregularity warranting interference by this Court.

4.Heard the rival submissions and perused the materials available on record.

5.From the perusal of the records, it is evident that the detenu Solairaja is the sole accused in Crime No.408 of 2020, on the file of Nanguneri Police Station. He is said to have committed offences punishable under Sections 366(A), 376 I.P.C., and Section 5(1) r/w. 6 of Protection of Children from Sexual Offences Act, 2012. In Paragraph No.5 of the grounds of detention, the Detaining Authority has mentioned that the detenu is committing sexual crimes and also acting in a manner prejudicial to the maintenance of public order. As rightly pointed out by the learned counsel for the petitioner that to show that the detenu committing sexual crimes, no material was placed by the sponsoring authority. Hence, we are of the opinion that the subjective satisfaction has been reached on lack of application of mind.

6.In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confidential Number 114 of 2020, dated 04.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Solairaja, aged about 28 years, S/o.Thangapandi, 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.

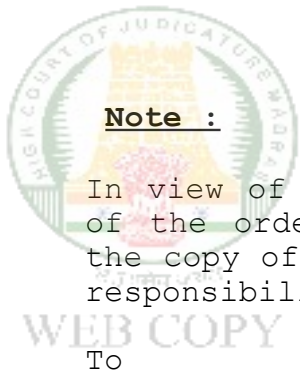
Sd/-

Assistant Registrar (P & A)

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/ /2021

Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal Secretary to the Government,
Home, Prohibition and Exercise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai.
- 4.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
Fort St.George,
Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.Krishnan, Advocate (SR24301)

H.C.P. (MD) No.269 of 2021
29.07.2021

NS

RS (12.08.2021) 3P-7C