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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS. JUSTICE R.N.MANJULA

H.C.P.NO.1096 OF 2021

R.Sudha

.. Petitioner

Vs.

1. State of Tamil Nadu represented by
The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section)
Vepery,
Chennai - 600 007.
3. The Superintendent of Prisons,
Central Prison-II,
Puzhal,
Chennai-600 066.
4. The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai.

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records relating to the detention order in BCDFGISSSV No.173/2021 dated 24.06.2021 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Rajagopalan, S/o.Govindaraj, aged about 59 years, the detenu, now confined in the Central



Prison II, Puzhal, Chennai, before this Court and set the petitioner's husband Rajagopalan, S/o.Govindarajan, aged about 59 years, the detenu herein at liberty.

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For Petitioner : Mr.M.Suresh

For Respondents : Mr.R.Muniyapparaj,
Addl. Public Prosecutor

ORDER

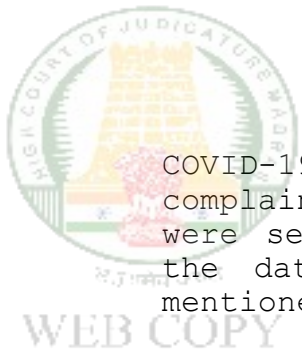
[made by P.N.PRAKASH, J.]

The petitioner is the wife of the detenu Rajagopalan, S/o.Govindaraj, aged about 59 years. The detenu has been detained by the first respondent by his order in Memo BCDFGIISSSV No.173/2021 dated 24.06.2021, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of 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 Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though many grounds have been raised in the petition, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention and violation of Section 8 of Act 14 of 1982.

4. The learned counsel for the petitioner submitted that the detention order has been clamped based on a solitary case in Cr.No.5 of 2021 that was registered on 24.05.2021 on the complaint given by one **"X"**, who is a **"Y"**, in which, she has stated that five years ago, the detenu, who was her Commerce teacher, had made sexist remarks towards her; on these allegations, the detenu was arrested on 25.05.2021 and the detention order was passed on 24.06.2021. He further submitted that the police have even filed the charge sheet in Cr.No.5 of 2021 for the offence under Section 12 of the POCSO Act for which the maximum punishment is only 3 years, whereas, the detenu has been in incarceration for the last seven months based on the grounds that are stale; the trial Court has granted regular bail to the detenu; there is no basis for the Detaining Authority to come to the conclusion that the detenu had misbehaved during online classes, because, online classes started only after the



COVID-19 pandemic and not five years ago when the de facto complainant was the detenu's student; the grounds of detention were served belatedly as could be seen from the correction in the date; and similar bail order particulars have not been mentioned.

5. The learned Additional Public Prosecutor strongly and vehemently opposed the habeas corpus petition on the basis of the counter affidavit filed by the State and submitted that four students have come forward and given Section 164 Cr.P.C. statements that the detenu had misbehaved during online classes now.

6. This Court gave its anxious consideration to the grounds raised in the petition, the counter affidavit of the State and the rival submissions made across the Bar.

7. Admittedly, the detention order in this case has been passed based on a solitary case in Cr.No.5 of 2021 in which **"X"**, aged ***20 years, *Y"**, has stated that during 2015-2016, the detenu, who was her Commerce teacher, had made sexist remarks on various occasions. Thus, it is obvious that the ground case incident is said to have occurred five years ago and on this stale ground without a live link, the detention order has been passed, which shows non-application of mind. The detention order also speaks about the misbehavior of the detenu during online classes, to support which, in paragraph 12 of the counter affidavit of the State, it is stated as under:

"12. After knowing the complaint filed by Selvi **"X"**,, 4 students (3 girls and one boy) aged 21 years and above came forward and have given statements u/s 164 Cr.P.C. before the learned XXIII Metropolitan Magistrate, Saidapet, against Thiru. Rajagopal."

8. A reading of the above averment shows that all the 4 students are 21 years and above like **"X"**, and must have obviously passed out of the school and could not have attended the online classes in 2020-2021. That apart, the reference to the four students giving Section 164 Cr.P.C. statements finds no place in the grounds of detention. Their names have also not been given. Hence, the detention order suffers from the vice of non-application of mind as well for taking into consideration extraneous materials.



9. Further, in ground 'b', the petitioner has averred as follows:

"b..... That apart, there is no material to infer that in similar cases, bail was granted by the Hon'ble Court."

It is pertinent to note that the grounds of detention are silent on the aforesaid aspect, whereas, in paragraph 6 of the counter affidavit, it is stated as follows:

"6. This clearly and cogently shows that there is an imminent possibility of the detenu being released on bail at the time of disposal of the bail application, since in a similar case, bail was granted to the accused concerned in the similar case by the Court for the similar offence."

10. When the counter affidavit asserts that in a similar case, bail was granted to the accused concerned, the grounds of detention are totally silent on that aspect, which also shows that extraneous materials not made available to the detenu have been taken into consideration.

11. Lastly, in ground 'n', it has been stated as follows:

"n. In the grounds of detention, last page, the date and time of serving the grounds of detention have been corrected and there is overwriting thereby confirm that the grounds of detention have not been served on the date and time as mentioned therein."

12. On a perusal of the original grounds of detention, it is seen that there are corrections in the date, i.e., 28.06.2021, both in the English version as well in the Tamil version, which is manifestly visible to the naked eyes. Therefore, there is sufficient force in the stand of the detenu that the grounds of detention were not served on him within the time prescribed under Section 8 of the Tamil Nadu Act 14 of 1982. The impugned detention order is therefore liable to be quashed.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.173/2021 dated 24.06.2021, passed by the first respondent is set aside. The detenu, viz., Rajagopalan, S/o.Govindaraj, aged about 59 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-CCC)

25.01.2022

"X" as substituted as victim girl

"Y" as substituted as her occupation

***Corrected as per order dated**

in 01.02.2022 in

HCP.No.1096 of 2021

Sd/-

Assistant Registrar (CS-II)

07.02.2022

//True copy//

Sub Assistant Registrar

nsd

To

1. The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section)
Vepery,
Chennai - 600 007.
3. The Superintendent of Prisons,
Central Prison-II,
Puzhal,
Chennai-600 066.
4. The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai.

**To be substituted to
the order already
despatched on
27.01.2022**



5. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

6. The Public Prosecutor,
High Court, Madras.

Copy To

**The Deputy Registrar,
Current Section,
High Court, Madras.**

+1cc to Mr.Sunder Mohan, Advocate, SR.NO.13030 (10/02/2022)

H.C.P.No.1096 of 2021

UM(CO)
GMY (25/01/2022)
PM/09/02/2022