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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.1091 of 2021

M.Grace Helina

.. Petitioner

Vs.

1. The Commissioner of Police,
The Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai - 600 007.
2. Government of Tamil Nadu represented by
The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
3. The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai.
4. The Inspector of Police,
W-10, All Women Police Station,
Flower Bazaar, Chennai - 18.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records in detention order Memo No.177/BCDFGISSSV/2021 dated 26.06.2021 on the file of the 1st respondent and quash the same and direct the respondents herein to produce the petitioner's husband P.Nagarajan, S/o.Pandiyan, male, aged about 59 years, the detenu, now confined in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.



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For Petitioner : Mr.S.Prabakaran
Senior Counsel for
Mr.M.Mohamed Riyaz
For Respondents : Mr.R.Muniyapparaj,
Addl. Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu Nagarajan, S/o.Pandiyan, male, aged about 59 years. The detenu has been detained by the first respondent by his order in Memo No.177/BCDFGISSSV/2021 dated 26.06.2021, 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. According to the learned counsel for the petitioner in Page No.1 in the English version of the grounds of detention, there are some blanks. Therefore, the impugned order of detention is vitiated in law.

4. The learned Additional Public Prosecutor strongly and vehemently opposed the habeas corpus petition by filing his counter.

5. A perusal of the booklet would go to show that in Page No.1 in the English version of the grounds of detention, there are some blanks, which shows non-application of mind on the part of the detaining authority in passing the order of detention. The impugned detention order is therefore liable to be quashed.

6. That apart, in the affidavit, the petitioner has stated as follows in ground "h.":

"h. The detenu was arrested on 28.05.2021 and he was produced before the learned Special Judge for trial by POCSO act cases, at Chennai on 29.05.2021. But the learned special judge for trial by POCSO act



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cases, at Chennai initially has refused to remand the accused to judicial custody for not informing the arrest of accused to the relatives of the accused which is violation of principle natural justice and article 21 of the Constitution of India. It is further submitted that after rectifying the irregularities committed by 4th respondent and he was sent to the judicial custody on 30.05.2021. But the detaining authority has failed to state anything about the remand and the extension of remand of the detenu in the grounds of detention. It also amounts to non application of mind and thereby vitiates the subjective satisfaction. The order of detention is vitiated due to non furnishing of remand dated 30.05.2021 and extension of remand order."

7. In response to the above allegation, in paragraph no.12 of the counter affidavit, it is stated as follows:

"12. I submit that the averment made in Paragraph Ground (h) of the affidavit, is not correct and it is false. The detenu was arrested on 29.05.2021 at 15.00 hours in front of Government Royapettah Hospital and remanded to Judicial custody. The Hon'ble Sessions Judge has pointed out certain lapse on 29.05.2021. The arrest intimation was given to his wife Tmt.Grace Elina (Petitioner herein) on the same day. She has signed the Arrest Memo at Page 46 of the Booklet as "Witness". The detenu was produced before the Sessions Judge, Special Court for POSCO Cases, Chennai, on 30.05.2021. The Hon'ble Sessions Judge elaborately discussed the facts and circumstance in his order dated 30.05.2021 and remanded the detenu to Judicial custody till 11.06.2021."

8. A reading of the above paragraph shows that the detenu was arrested on 29.05.2021 at 15.00 hours in front of Government Royapettah Hospital and remanded in judicial custody. However, in the same paragraph, it is stated that the Sessions Judge has pointed out certain lapse on 29.05.2021. The detention order is completely silent on this important aspect and it merely states that the detenu was produced before the Special Court for Exclusive trial of Cases under the POCSO Act on 30.05.2021. There is absolutely no reference as to what had transpired on 29.05.2021 with regard to the remand of the detenu. This shows non-application of mind on the part of the detaining authority in passing the order of detention. The impugned detention order is therefore liable to be quashed.



In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.177/BCDFGISSSV/2021 dated 26.06.2021, passed by the first respondent is set aside. The detenu, viz., Nagarajan, S/o. Pandiyan, male, aged about 59 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Commissioner of Police,
The Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai - 600 007.
2. The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
3. The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai.
4. The Inspector of Police,
W-10, All Women Police Station,
Flower Bazaar, Chennai - 18.
5. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Mohamed Riyaz, Advocate, S.R.No.1786

H.C.P.No.1091 of 2021

EV(CO)
CT 12/01/2022