



HCP(MD)No.339 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.09.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.339 of 2022

Chellathai

... Petitioner / Wife of the Detenue

/Vs./

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St.Geroge,
Chennai-600 009.

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records, connected with the detention order of the respondent No.2 in H.S.(M)Confdl.No.188 of 2021 dated 16.12.2021 and quash the same and direct the respondents to produce the detenu by name, Seenivasan, S/o.Sudalaimuthu, aged about 43 years,



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now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Seenivasan, S/o.Sudalaimuthu, aged about 43 years. The detenu has been detained by the second respondent by his order in Detention Order H.S.(M)Confdl.No. 188 of 2021 dated 16.12.2021 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.



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3. The learned counsel appearing for the petitioner submitted that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the detaining authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. The learned counsel appearing for the petitioner mainly urged two grounds challenging the detention order.

4. The first ground that was urged by the learned counsel appearing for the petitioner is that the detaining authority has mentioned in the order of detention about the extension of remand upto 30.12.2021. However, there is absolutely no material available for the remand extension order and without any material, such finding was given by the detaining authority.

5. The next ground that was urged by the learned counsel appearing for the petitioner is that the detaining authority had taken note of the bail order passed in CrI.M.P.(MD)No.685 of 2021, dated 02.05.2021 and has come to a conclusion that there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the order



that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, cannot be considered to be the order passed in the similar case, since the face of the case is completely different from the facts of the present case.

6. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter, and on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for POCSO Act cases, Tuticorin, and the same is yet to be numbered.

7. Insofar as the first ground that was urged by the learned counsel appearing for the petitioner, it is seen from the materials placed before us that what was annexed was only the request for remanding the accused person and remand order or remand extension order is not found in the paper book. In view of the same, the finding rendered by the detaining authority to the effect that the detenue was remanded and his remand order was further extended is not supported by any material.



8. Insofar as the second ground that was urged by the learned counsel appearing for the petitioner that there is a likelihood of the detenu being granted bail, the detaining authority has also taken note of the fact that the bail petition filed by the detenu was dismissed and there was no bail petition pending as on date, when the detention order was passed. The detaining authority has relied upon the order passed in CrI.M.P.(MD)No.685 of 2021, dated 02.05.2021, to come to a conclusion that since in a similar case, bail was granted to the accused therein, there is a likelihood of the detenu being granted bail.

9. On carefully going through the order relied upon by the detaining authority, it is seen that the case where the accused therein was aged about 22 years and he had developed a relationship with a girl, aged about 15 years and they seem to have had sexual intercourse. This fact was taken into consideration by the concerned Court and the Court had also taken into consideration to the fact that the accused therein had suffered a long incarceration. The said order has nothing to do with the facts of the present case, since this is the case where the detenu is aged about 43 years and the victim girl is aged about 15 years. In the case no hand, there was no



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question of relationship and it is a clear case of rape. Therefore, the bail order that was considered by the detaining authority cannot be considered to be the same case of the present case. This clearly reflects non-application of mind on the part of the detaining authority. The impugned detention order is therefore liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)Confdl.No.188 of 2021 dated 16.12.2021 passed by the second respondent is set aside. The detenu, viz., Seenivasan, S/o.Sudalaimuthu, aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case. However, there shall be a direction to the Special Court for POCSO Act cases, Tuticorin, to immediately act upon the final report and proceed further in accordance with law.

(J.N.B.,J.) (N.A.V.,J.)
30.09.2022

Index : Yes/No
Internet : Yes
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