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H.C.P.No.36 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.36 of 2023

T.Arthi

.. Petitioner

VS

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Police,
Ariyalur District, Ariyalur.
- 4.The Superintendent,
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police,
All Women Police Station,
Jeyankondam, Ariyalur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records from the second respondent in Cr.M.P.No.42/2022 dated 14.12.2022 and by setting aside the order of detention passed by the second respondent and produce the detenu namely Navarasu, son of Mathiyazhagan, aged about 20 years, now detained at Central Prison, Trichy, before this Court and set him at liberty.



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For Petitioner : Mr.V.Illanchezian
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 14.12.2022 bearing reference Cr.M.P.No.42/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.



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3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.49 of 2022 on the file of All Women Police Station, Jayankondam for alleged offences under Sections 354A, 376(3), 376(2)(n), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 5(l), 5(j) (ii) r/w Section 6 of 'Protection of Children from Sexual Offences Act, 2012' (hereinafter 'POCSO Act' for the sake of convenience and clarity). Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.V.Illanchezian, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised/urged but in the final hearing today, Mr.V.Illanchezian, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction (qua imminent possibility of detention being enlarged on bail) arrived at by the detaining authority is not



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supported by any material. Learned counsel elaborating on the above point, drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order and that portion of paragraph 5 reads as follows:

'5. I am aware that Thiru.Navarasu, son of Mathiyazhagan is in remand in All Women Police Station, Jayankondam vide Crime Number 49/2022 and relatives of Thiru.Navarasu are taking efforts to move bail applications to take him out on bail in the above case..'

6. Learned counsel adverting to the above, submitted that no material has been supplied to the detenu i.e., no material supporting the averment that the detenu's relatives are taking steps to take him out on bail.

7. Learned counsel placed before us a copy of the booklet supplied to the detenu and we had the benefit of perusing the same.

8. As the matter turns on matter of records learned Prosecutor really does not have much of a say.

9. After perusing the grounds booklet served on the detenu, we have no reason to disagree with the learned counsel for petitioner.



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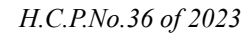
WEB COPY 10. The narrative thus far means that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.12.2022 bearing reference Cr.M.P.No.42/2022 made by the second respondent is set aside and the detenu Thiru.Navarasu, aged 20 years, son of Thiru.Mathiyazhagan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
27.06.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.



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- 2.The District Collector and District Magistrate,
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- 6.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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