



H.C.P.No.877 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.877 of 2022

S.Baby

W/o. (Late) Saravanan

..

Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Dept.
Fort St.George
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Vellore - 9
Vellore District.
3. The Superintendent of Police
Vellore - 9
Vellore District.
4. The Superintendent of Prison
Central Prison, Vellore.
5. The Inspector of Police (L&O)

Page Nos.1/7



H.C.P.No.877 of 2022

Katpadi Women's Division Police Station
Ranipet District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention bearing Order No.C3/D.O.No.49/2022, passed by the second respondent dated 01.05.2022 against the petitioner's son S.Karthik, Male aged 28 years, S/o.Saravanan, who is confined at Central Prison-I, Vellore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.M.Elumalai
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

This habeas corpus petition was filed on 16.05.2022 assailing a 'detention order dated 01.05.2022 bearing reference No.C3/D.O.No.49/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., jurisdictional District Collector. To be noted, fifth respondent is the Sponsoring Authority.

2. The petitioner is the mother of detenu.

Page Nos.2/7



H.C.P.No.877 of 2022

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3. In and by the impugned detention order, the detenu has been detained on the premise that he is a 'Sexual Offender' within the meaning of Section 2(ggg) of '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].

4. Mr.M.Elumalai, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondents are before us.

5. The learned counsel for the petitioner submitted that the detenu was arrested in the ground case on 14.03.2022, the impugned detention order was passed on 01.05.2022 and there is a delay of 48 days. Hence, there is no live and proximate link between grounds of detention and purpose of detention. He further submitted that in the ground case, investigation completed, charge



H.C.P.No.877 of 2022

sheet filed and the same was taken on file in Special S.C.No.151 of 2022 on the file of the POCSO Court at Vellore. He further submitted that three witnesses including the victim girl were examined as P.W.1 to P.W.3 and trial is in progress. He further submitted that the detenu is facing trial for alleged offences under Sections 5(1), 6, 11(4) and 12 of 'the Protection of Children from Sexual Offences Act, 2012 [No.32 of 2012]' [hereinafter 'POCSO Act' for the sake of convenience and clarity]. Since the possibility of getting bail by the detenu is remote there is no valid ground to detain the detenu. The Detaining Authority, had recorded that no bail application was filed on behalf of detenu but merely states that he received information from reliable sources that bail application is to be filed by the detenu through his relatives but there are no particulars regarding what steps taken and who are the relatives to take initiative to file bail application. Hence, the subjective satisfaction arrived at by the Detaining Authority is not proper.

6. Learned Additional Public Prosecutor submitted that the petitioner is son of care taker of Palaniappa Orphanage Home, Sholingur wherein the



H.C.P.No.877 of 2022

victim girl was residing. He further submitted that the detenu had committed serious offences. In this case, documents and materials have to be collected and thereafter, the Sponsoring Authority sent a request for detention of the detenu. The Detaining Authority, after considering all the materials passed the impugned detention order on 01.05.2022 and the delay is reasonable. He fairly submitted that the trial is in progress and witnesses are being examined.

7. Considering the submissions and materials placed before this Court, considering the fact that the detenu was arrested on 14.03.2022 and the impugned detention order was passed only on 01.05.2022 with a delay of 46 days which is unexplained, the live and proximate link between the grounds of detention and purpose of detention has snapped. Further there is no material to show that what steps taken to file bail application for the detenu, the subjective satisfaction is vitiated. On these points, this Court is inclined to set aside the impugned detention order.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned



H.C.P.No.877 of 2022

detention order dated 01.05.2022 bearing reference C3/D.O.No.49/2022 made by the second respondent is set aside and the detenu Thiru.Karthik, son of Mr.Saravanan is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

9. Captioned HCP ordered on above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

07.02.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore.

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

mk

Page Nos.6/7



H.C.P.No.877 of 2022

To

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High Court, Madras.

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