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H.C.P.No.912 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.912 of 2022

Banu

W/o.Baskar

..

Petitioner/

Foster Mother of the detenu

Vs.

1. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort. St.George, Chennai
2. The District Collector and District Magistrate
Vellore District, Vellore-9
3. The Superintendent of Police
Vellore District, Vellore
4. The Superintendent
Central Prison
Vellore, Vellore District
5. The Inspector of Police
Vellore North (L&O) Police Station
Vellore, Vellore 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 relating to the impugned order C3/D.O.No.40/2022 dated 14.04.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu, namely Bharath @ Bhara, son of Rajan, aged about 18 years, now confined at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar
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 foster mother of detenu assailing a 'preventive detention order dated 14.04.2022 bearing reference C3/D.O.No.40/2022' [hereinafter 'impugned 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 detention order has been made by second respondent.



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2. Impugned 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.

3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.127 of 2022 on the file of Vellore L & O Police Station for alleged offences under Sections 147, 148, 342, 365, 368, 376(D), 376(E), 395, 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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

5. Notwithstanding very many averments in the support affidavit, Mr.G.Vinodh Kumar, learned counsel for petitioner raised four points. The four points, discussion and dispositive reasoning on the same are as follows:

a) The first point raised is, arrest of the detenu has not been informed to the father of the detenu though at page 58 of the booklet, in the Arrest/Court Surrender Form (Arrest / Court Surrender Form commences at page 56 of the booklet), mobile number of the detenu's father has been mentioned. Learned State Additional Public Prosecutor adverting to page 16 of the booklet submits to the contrary and says that detenu's father has signed the கைது குறிப்பாணை (Arrest Intimation). We find the signature of the detenu's father at page 17. Therefore this point does not find favour with us.



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b) The second point urged is that a confession statement at Pages 36 to 40 is not legible. We had the benefit of perusing the booklet and confession statement in Tamil. We are unable to agree with learned counsel for the petitioner as it is readable though a little effort needs to be put in. Therefore, this point also fails.

c) The next point urged by learned counsel for petitioner is regarding imminent possibility of the detenu being enlarged on bail. It is submitted that the detenu has not moved any bail application. We find from the impugned detention order that the detaining authority has also proceeded on the basis that the detenu has not moved any bail application. However, the Detaining Authority has arrived at the subjective satisfaction of imminent possibility of detenu being enlarged on bail by saying that bail has been granted in a similar case (as rightly pointed out by learned Additional Public Prosecutor). Therefore, in the facts and circumstances of the case on hand we are not inclined to sustain this point in favour of the petitioner.



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d) The last and fourth point urged by learned counsel for petitioner is delay in considering the representation qua impugned detention order. In response to this, learned Prosecutor placed before us a chronology of dates and events and the same is as follows:

<i>'Representation dated</i>	:	<i>20.06.2022</i>
<i>Representation received on</i>	:	<i>22.06.2022</i>
<i>File submitted on</i>	:	<i>23.06.2022</i>
<i>Under Secretary dealt with on</i>	:	<i>23.06.2022</i>
<i>Deputy Secretary dealt with on</i>	:	<i>23.06.2022</i>
<i>Minister dealt with on</i>	:	<i>28.06.2022</i>
<i>Rejection letter prepared on</i>	:	<i>28.06.2022</i>
<i>Rejection letter sent to the detenu on</i>	:	<i>28.06.2022</i>

Govt. Holidays:

25.06.2022 and 26.06.2022'

6. We carefully considered the trajectory the representation has taken. If the two public holidays are excluded, there can be, at the highest delay of two days. Considering the facts and circumstances of the case on hand and more particularly taking into account the nature of representation, which has been sent, we find that this is not a case which is good enough to say that constitutional safeguard ingrained in clause (5) of Article 22 of the Constitution of India has been violated.



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7. All the four points urged by learned counsel for petitioner does not find favour with us. Therefore, the sequitur is, captioned HCP fails and the same is dismissed.

(M.S.,J.)

(M.N.K.,J.)

13.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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