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H.C.P.No.1085 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1085 of 2022

Chinnathambi
S/o.Kalimuthu

.. Petitioner/
Father of the Detenu

Vs.

1. The State of Tamilnadu,
Represented by Secretary to Government,
Prohibition & Exercise Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Police/Detaining Authority,
Coimbatore City Police,
Coimbatore.
3. The Superintendent of Police,
Central Prison,
Coimbatore.
4. The Inspector of Police,
E-3, Saravanampatty Police Station,
Coimbatore 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 detention order dated 16.04.2022 passed by the second respondent in C.No.22/G/IS/2022 and quash the same and direct the respondents herein to produce the petitioner's son C.Manimaran, S/o.Chinnathambi, aged 40 years, who is presently under going detention in the Central Prison, Coimbatore before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Ms.S.Valarmathi
for Mr.V.Sankar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

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 father of a detenu assailing a 'preventive detention order dated 16.04.2022 bearing reference No.C.No.22/G/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent



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is the detaining authority as impugned detention order has been made by second respondent.

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.706 of 2021 on the file of E-3 Saravanampatty Police Station for an alleged offence under Section 366 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and 11(4) read with 12 of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO' for the sake of convenience and clarity]. To be noted F.I.R. (First Information Report)



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was originally registered for 'GIRL MISSING' and subsequently altered as these sections of 'IPC' and 'POCSO'. 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.

4. Ms.S.Valarmathi, learned counsel representing Mr.V.Sankar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all four respondents are before us.

5. Though several grounds have been raised in support affidavit, learned counsel for petitioner at the hearing predicates his campaign against impugned detention order on two points and they are as follows:

(i) The impugned detention order proceeds on the basis that detenu is likely to get bail but this subjective satisfaction qua imminent possibility of being enlarged on bail is impaired as there is no material.



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(ii) As regards the arrest in the ground case, the detenu's

second wife has been informed but they have been separated.

6. In response to aforesaid two points the learned Additional Public Prosecutor has made submissions, which are as follows:

(i) Adverting to page 84 of the grounds booklet learned Additional Public Prosecutor submitted that a statement under Section 161(3) of 'Criminal Procedure Code' [hereinafter 'Cr.P.C' for brevity] has been taken from the detenu's father and the detenu's father states that he is taking steps through an advocate for taking out the detenu on bail.

(ii) It is submitted that the second wife of the detenu has signed and acknowledged the arrest memo and it is part of the booklet in page 32.



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7. We carefully considered the two points. As regards first point as there is a statement from the detenu's father, the argument that there is no imminent possibility of detenu being enlarged on bail and the subjective satisfaction in this regard is impaired does not find favour with us. As regards the second point page 32 of the booklet makes it clear that the second wife of the detenu (Poornima) has signed the arrest memo and therefore it cannot be gainsaid that the arrest has not been intimated to a near relative. In any event there is nothing to demonstrate infraction of constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India.

8. Both the points canvassed on behalf of the petitioner in petitioner's campaign against the impugned detention order fails. The captioned HCP is dismissed.

(M.S.,J.)

(M.N.K.,J.)

01.03.2023

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Speaking

Neutral Citation : Yes

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