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HCP No.1126 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.1126 of 2022

Devi

.. Petitioner

-VS-

- 1.The State of Tamil Nadu
Represented by Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai – 9.
- 2.The District Magistrate and District Collector
Tiruppur District, Tiruppur.
- 3.The Superintendent of Police
Tiruppur District, Tiruppur.
- 4.The Inspector of Police,
All Women Police Station,
Udumalpet, Tiruppur District.
- 5.The Superintendent of Prison,
Central Prison,
Coimbatore.

... Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing to produce the body of the detenu by name Mohankumar, S/o.Aruchamy, aged 46 years, before this Court who is presently confined at Central Prison, Coimbatore and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 04.05.2022 in Cr.M.P.No.22/Sexual Offender/2022 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.B.Christ Das
for Mr.D.R.Arun Kumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'habeas corpus petition' ('HCP' for the sake of convenience and clarity) has been filed in this Court on 14.06.2022 by wife of the detenu assailing detention order dated 04.05.2022 in Cr.M.P.No.22/Sexual Offender/2022 (hereinafter be referred to as 'impugned Detention Order') made by the second respondent i.e., jurisdictional District Collector (hereinafter be referred to as



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'Detaining Authority' for the sake of convenience and clarity). To be noted, fourth respondent, who is the Inspector of Police of the jurisdictional police station, is the sponsoring authority.

2. The ground case in the captioned HCP is, the detenu is alleged to have sexually assaulted a mentally ill woman. The most relevant portions of the allegation as captured in the grounds of detention are as follows:

'(i).....Further, even though Revathi was mentally affected, she used to speak a little, to understand other's taking as she is hearing well and in the stage of replying them. In these circumstances, on 30.03.2022 morning after Karuppusamy and Loganathan went for work, Rani sent her children to school, asked Revathi to remain in the home alone, Jothi and Rani went to Government Hospital, Pollachi for treatment at about 9.30 A.M. and then returned home by about 3.00 P.M. On the way, they noticed that house owner Mohankumar was leaving from their house. Then, when both of them went home, found the house was locked inside and when knocked the door, Revathi opened it. Jothi asked with Revathi as why the house owner came there to which Revathi told her that he had come to receive



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water hose pipe yesterday, came now, hugged and kissed her, removed the pants of her and him, make her to lay on the wooden cot and pressed on her vaginal part. On hearing after told by Revathi, Jothi raised hue and cry as Mohankumar raped her daughter and Rani also raised hue and cry. The nearby persons rushed there on hearing their hue and cry and examined. After coming to know as what happened, Rani talked along with the area people and then took Revathi to Government Hospital, Udumalaipettai on 30.03.2022 at 10.30.P.M. and admitted her. She requested to take action against the house owner Mohankumar who had involved in sexual assault even after knowing that Revathi is a mentally affected woman. The Sub Inspector recorded the above statement of Jothi and read it over to her as Jothi did not know to read and write and then obtained her thumb impression in the above said statement. Later, the Sub Inspector of Police return to Police Station, based on the complaint statement of Jothi, registered the First Information Report against Mohankumar in Udumalaipettai, All Women Police Station Crime No.14/2022 under Section 376(2) of Indian Penal Code on 31.03.2022 and handed over it to the Inspector of Police, All Women Police Station,



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Udumalaipettai for investigation.

(ii) It was ascertained during enquiry of the Inspector that Mohankumar, owner of the house in which Jothi is residing and knows well that Revathi was mentally affected and remaining in the house, made the situation of that Revathi was alone in the house and involved in the sexual assault.'

3. It may not be necessary to dilate further on facts as Mr.B.Christ Das, learned counsel representing counsel on record for petitioner says that his campaign against impugned Detention Order is predicated on two points. The two points, discussion and dispositive reasoning on the same are as follows:

3.1 The first point is, the detention order refers to a G.O. namely G.O.(D) No.125 Home Prohibition and Excise (XVI) Department dated 11.04.2022, this G.O. pertains to sub-section (2) of Section 3 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



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14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity], vide which impugned Detention Order has been made by detaining the detenu as 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982 but the G.O. has not been provided to detenu. Though this ground cannot be brushed aside at the threshold, on the facts of the case on hand, on a perusal of the case file, we find that there is no disputation that the Detaining Authority has the powers to make the impugned Detention Order. Therefore, even if the Government Order had been made available to the detenu, it would not have really made any difference in terms of effective representation *qua* impugned Detention Order. We make it clear that this view is being taken on the peculiar facts and circumstances of the instant case and this will not serve as a precedent for all cases as it is always desirable to furnish to the detenu a copy of Government Order referred to in the grounds of detention, though it may turn only on delegation of powers.

3.2. As regards second point, learned counsel submits that there is nothing to demonstrate that public order has been endangered.



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3.3 We carefully perused the impugned Detention Order. In sub paragraph (vi) of paragraph 3 of the grounds of detention, the public order aspect has interalia been articulated by the Detaining Authority. The said sub paragraph reads as follows:

'(vi) The case records pertaining to Mohankumar, which was produced before me by the Inspector of Police, All Women Police Station, Udumalaipettai were considered by me carefully. It is ascertained that, even though she attained the age, Revathi's mental was affected not to understand that she was subjected under sexual assault and Mohankumar, who made it on his favour, told her that he would marry her while nobody was at home and had sexual intercourse with her and through that he had exposed his perverted sexual lust. It is clearly ascertained that such activities of Mohankumar are against the human discipline and violation of human rights. Though the State disturbances against the women should be contained by taking stringent action, Mohankumar had committed the above said offence even after knowing that sexual assault is an offence. Hence, in order to have imminent control of his such activities and in order to remove the fear and a feeling of insecurity among



the public, especially on the minds of women, I infer that the necessary arose to detain Mohankumar, as a "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982." (underlining made by us for ease of reference)

4. On facts of the case on hand, we are of the considered view that the aforementioned articulation is good enough *qua* subjective satisfaction of Detaining Authority regarding prejudice to maintenance of public order facet of the case. We remind ourselves of declaration of law by a Constitution Bench in the celebrated judgment in ***Dr.Ram Manohar Lohia v State of Bihar and others*** reported in ***AIR 1960 SC 740*** and more particularly paragraphs 51 and 52 thereat where the Honourble Supreme Court has elucidatively and by resorting illustrative approach and propounding the three concentric circles theory articulated the clear distinction between 'law and order' and 'public order'.

5. We are conscious that every case of Law and Order may not qualify as 'public order'. In the facts and circumstances of the case, in the light of contents of the impugned Detention Order, we are



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unable to disagree with the subjective satisfaction of Detaining Authority that there is 'public order' element/ facet.

6. The narrative thus far leads us to the conclusion that there is no ground to interfere with the impugned Detention Order. Therefore, the captioned HCP fails.

7. Before writing the operative portion of this order, we deem it appropriate to make it clear that this order will neither serve as impetus nor impede the trial which is underway vide Spl.C.C.No.22 of 2022 on the file of Sub Court (Mahila Court), Tiruppur. We are informed that the trial is progressing and the matter is listed tomorrow (31.01.2023) in the trial Court.

8. In the result, captioned HCP fails and the same is dismissed. There shall be no order as to costs.

(M.S., J.) (M.N.K., J.)
30.01.2023

Index:Yes/No
Neutral Citation : Yes/No
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Fort St.George, Chennai – 9.
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M.NIRMAL KUMAR, J.**

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