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H.C.P.No.1157 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.1157 of 2022

S.Babu

S/o.Sayed Basha

..

Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home Prohibition and Excise (XVI) Department
Fort St.George, Secretariat
Chennai-600 009.
2. The District Magistrate and
District Collector of
Dharmapuri District
Dharmapuri.
3. The Superintendent of police
Dharmapuri District
Dharmapuri.
4. The Superintendent of Prison
Central Prison
Salem, Salem District.

Page Nos.1/9



H.C.P.No.1157 of 2022

WEB COPY

5. The Inspector of Police
Morappur Police Station
Dharmapuri 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 in connection with the order of detention passed by the second respondent dated 18.05.2022 in his office ref.S.C.No.12/2022 against the petitioner's son by name Thiru.Mubarak, aged about 26 years, now confined at Central Prison, Salem, Salem District and set aside the same and direct the respondents to produce the above said detenu before this Hon'ble Court and set him at liberty.

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed in this Court on 17.06.2022 by father of the detenu assailing a 'detention order dated 18.05.2022 bearing reference S.C.No.12/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'second respondent i.e.,



H.C.P.No.1157 of 2022

jurisdictional District Collector' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent i.e., jurisdictional Inspector of Police is the Sponsoring Authority.

2. Impugned detention order has been made by the Detaining Authority on the premise that the detenu 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].

3. Mr.M.Selvam, learned counsel on record for petitioner, notwithstanding very many averments / grounds in the support affidavit qua captioned HCP projects two points before us.



H.C.P.No.1157 of 2022

4. The first point turns on grounds of detention that was furnished to the detenu. To be noted, the grounds of detention is furnished to the detenu in the form of a booklet and therefore grounds of detention shall hereinafter be referred to as 'booklet' for the sake of convenience and clarity. Learned counsel placed the booklet served on the detenu before us and drew our attention to pages 16 to 20 thereat which according to the impugned detention order is a complaint given by the victim. Learned counsel submitted that this complaint is clearly incomplete. A perusal of page No.20 makes it clear that it is incomplete and there is definitely one or more pages to the complaint. We had the benefit of perusing the 'case diary' ['CD']. A perusal of CD makes it clear that the complaint given by the victim (having been recorded on 24.05.2022) contains one more page (after page No.20 in booklet) which is internal page No.5 of the complaint. This ground is borne out by facts but learned Additional Public Prosecutor submitted that the complaint given by the victim has been captured in 161(3) statement i.e., Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity]. Learned Additional Public Prosecutor pointed out that this Section



H.C.P.No.1157 of 2022

161(3) Cr.PC statement of the complainant has been given to the detenu in the booklet and the same finds place at page Nos.24 to 26.

5. In a Section 161 of Cr.PC statement, the entire contents of the complaint may or may not be captured but that is in the domain of the trial Court. All that we would say is, argument that a Section 161(3) Cr.PC statement is a substitute to an incomplete copy of a complaint given by victim is unacceptable. In the light of this view which we take, we have no difficulty in persuading ourselves to say that the detenu's right to make an effective representation which is a Constitutional safeguard ingrained in Article 22(5) of the Constitution of India has been hampered.

6. The second point urged by learned counsel for petitioner turns on imminent possibility of detenu being enlarged on bail. Adverting to the impugned detention order, learned counsel for petitioner contended that vide paragraph No.4 of impugned detention order, the Detaining Authority has relied on what according to him is a similar case to come to the subjective satisfaction that there is imminent possibility of detenu being



H.C.P.No.1157 of 2022

enlarged on bail. The impugned detention order relies on Crime No.2212 of 2020 for alleged offences under Sections 363, 366 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 5(1)(j)(II) read with Section 6(1) read with Sections 16, 17 of 'the Protection of Children from Sexual Offences Act, 2012 [No.32 of 2012]' [hereinafter 'POCSO Act' for the sake of convenience and clarity], Sections 9 and 10 of Child Marriage Act, 2006 on the file of Dharmapuri Police Station. After advertng to the above, learned counsel submitted that the ground case is Crime No.93 of 2022 for alleged offences under Sections 363, 366 of IPC and Section 5(1), 6(1) of POCSO Act and Section 9 of Child Marriage Act 2006. Learned Additional Public Prosecutor submitted that factual matrix in both cases are broadly similar. Responding to this, learned counsel on record for petitioner submitted that the petitioner has not moved any bail application. We carefully examined paragraph No.4 of the impugned detention order and we find that comparison of the ground case and the case which according to the Detaining Authority is a similar case is in effect comparison of Apples and Oranges. The reason is, in what according to the Detaining Authority is a similar case there are alleged



H.C.P.No.1157 of 2022

offences under Sections 16 and 17 of POCSO Act whereas the same is absent in the ground case. Therefore, we are inclined to accept the second point (also) urged by the learned counsel for the petitioner.

7. In the light of both points urged by the learned counsel for petitioner finding favour with us, we are inclined to set aside the impugned detention order. Before we do that, we deem it appropriate to record that we are informed that the Sessions Case being Special S.C.No.44 of 2022 on the file of Mahila Court, Dharmapuri is at an advanced stage of trial. We are informed that L1 to L3 have already been examined.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.05.2022 bearing reference S.C.No.12/2022 made by the second respondent is set aside and the detenu Thiru.Mubarak, son of Mr.Babu is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



H.C.P.No.1157 of 2022

10. 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

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

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home Prohibition and Excise (XVI) Department
Fort St.George, Secretariat, Chennai-600 009.
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District Collector of
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5. The Inspector of Police
Morappur Police Station
Dharmapuri District.
6. The Public Prosecutor
High Court, Madras.

Page Nos.8/9



WEB COPY



H.C.P.No.1157 of 2022

M.SUNDAR, J.,
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M.NIRMAL KUMAR, J.,

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H.C.P.No.1157 of 2022

07.02.2023

Page Nos.9/9