



H.C.P.No.888 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.888 of 2023

Abhimanyu

.. Petitioner

VS

1.The State of Tamil Nadu

Rep. by its Additional Chief Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George
Chennai – 600 009

2. The District Collector and District Magistrate

Thiruvarur District
Thiruvarur

3. The Superintendent of Police

Thiruvarur District
Thiruvarur

4. The Superintendent of Prison

Central Prison, Thiruchirapalli

5. The Inspector of Police

Valangaiman Circle Police Station
Thiruvarur District

.. Respondents



H.C.P.No.888 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the detention order dated 31.01.2023 in C.O.C.No.07/2023 passed by the 2nd respondent and issue direction to produce the body of the detenu namely Rajendran @ Kitty Rajendran, son of Muniyandi, aged 60 years, presently confined at Central Prison, Thiruchirapalli before this Court and set him at liberty.

For Petitioner : Mr.Swami Subramanian

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by son of the detenu assailing a 'preventive detention order dated 31.01.2023 bearing reference C.O.C.No.07/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive 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,



H.C.P.No.888 of 2023

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 impugned preventive detention order has been passed based on a solitary case in Crime No.05 of 2023 on the file of Harithuvaramangalam Police Station for alleged offences under Sections 294(b), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(n), 5(m) and 5(l) read with Section 6 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity]. Considering to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

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



H.C.P.No.888 of 2023

5. The petitioner filed an affidavit in support of the HCP wherein the petitioner raised very many grounds against the impugned preventive detention order. But in the final hearing today, learned counsel for petitioner has submitted that the second respondent / Detaining Authority has not applied her mind while passing the impugned preventive detention order. Learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'.....In respect of Harithuvaramangalam Police Station Cr.No.05/2023 u/s.294(b), 506 (ii) IPC5(n), 5(m), 5(l) r/w 6 of POCSO Act 2012 he has not moved any bail application so far. The Sponsoring Authority has stated that Thiru.Abimanyu son of Detenu Thiru.Rajendran @ Kitty Rajendran is taking steps to take him out on bail by filing bail application for the ground case Cr.No.05/2023 before the appropriate court. Hence, I infer that there is real possibility of his Thiru.Rajendran @ Kitty Rajendran, Male, aged 60/2023, S/o.Maniyandi coming out on bail by filing a bail application for the above case before the appropriate court and higher court.....'

6. Elaborating the above argument, learned counsel for petitioner has submitted that detenu did not file any bail application but the Detaining Authority has stated that one Abimanyu, son of Thiru.Rajendran @ Kitty Rajendran (detenu) is taking steps to take the detenu out on bail but



statement of the said Abimanyu has not been obtained by the Sponsoring Authority. This shows that Detaining Authority without applying her mind has passed the impugned preventive detention order. The statement made in the grounds of detention that there is imminent possibility of the detenu coming out on bail is not supported by any material on record. Accordingly, learned counsel for petitioner prays to set aside the impugned preventive detention order.

7. Per contra, learned Additional Public Prosecutor has submitted that based on the material particulars furnished by the Fifth respondent / Sponsoring Authority, after satisfying the same, Detaining Authority has passed the impugned preventive detention order and therefore, he has prayed for dismissal of HCP.

8. We have perused the grounds of impugned preventive detention order. As stated supra, in paragraph 4, Detaining Authority has stated that Abimanyu, son of Rajendran @ Kitty Rajendran is taking steps to take the detenu out on bail but no statement or details have been furnished in the grounds booklet. No other supporting material has been furnished in the grounds booklet to say that there is an imminent possibility of detenu being enlarged on bail. Hence, we are of the view that the Detaining Authority without applying her mind has passed the impugned preventive detention



H.C.P.No.888 of 2023

order. Further, the Detaining Authority herself has stated that the detenu has not moved any bail application. Considering the cumulative facts and circumstances, we are of the view that the impugned preventive detention order has been passed by the Detaining Authority without applying her mind and therefore, the same is liable to be set aside.

9. Resultantly, this HCP is allowed. Impugned detention order dated 31.01.2023 bearing reference C.O.C.No.07/2023 made by the second respondent is set aside and the detenu Thiru.Rajendran @ Kitty Rajendran, son of Thiru.Muniyandi, aged 60 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
22.08.2023

Index : Yes

Neutral Citation : Yes

GPA

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



H.C.P.No.888 of 2023

To

WEB COPY

1. The Additional Chief Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Thiruvarur District
Thiruvarur
3. The Superintendent of Police
Thiruvarur District
Thiruvarur
4. The Superintendent of Prison
Central Prison, Thiruchirapalli
5. The Inspector of Police
Valangaiman Circle Police Station
Thiruvarur District
6. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.888 of 2023

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

gpa

H.C.P.No.888 of 2023

22.08.2023