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H.C.P.Nos.1333, 1644 and 1858 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

Coram

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

H.C.P.Nos.1333, 1644 and 1858 of 2022

In H.C.P.No.1333 of 2022

Saroaja
W/o.Chandrababu

... Petitioner/ Mother of detenu

-VS-

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Police (L & O-F) Department,
Fort St. George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Namakkal District,
Namakkal.
- 3.The Superintendent of Police,
Office of Superintendent of Police,
Namakkal District,
Namakkal.
- 4.The Superintendent of Central Prison,

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Central Prison, Salem,
Salem District.

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5.The Inspector of Police,
Namakkal Police Station,
Namakkal District.

... Respondents

Prayer in 1333 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in detention order in C.M.P.No.19/Sexual Offender/2022 dated 17.06.2022 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son Thiru.Murali, S/o.Chandrababu, Male, aged about 30 years, the detenu now confined in Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner .. Mr.K.T.S.Sivakumar

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

In H.C.P.No.1644 of 2022

Santhi
W/o.Ramasamy

... Petitioner/ Mother of detenu

-VS-



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1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St. George,
Chennai – 600 009.

2.The District Magistrate and District Collector,
Namakkal,
Namakkal District.

3.The Superintendent of Police,
Namakkal,
Namakkal District.

4.The Inspector of Police,
Namakkal Police Station,
Namakkal District.

... Respondents

Prayer in 1644 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in detention order C.M.P.No.18/Sexual Offender/2022(M1), dated 17.06.2022 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of my son Thiru.Dinesh @ Dineshkumar aged about 21 years, the detenu now confined in Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner .. Mr.K.Kannan

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



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In H.C.P.No.1858 of 2022

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E.Muthulakshmi
W/o.Easwaran

... Petitioner/ Mother of detenu

-VS-

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Namakkal District,
Namakkal.
- 3.The Superintendent of Police,
Namakkal District,
Namakkal.
- 4.The Superintendent of Prison,
Central Prison,
Salem.
- 5.The Inspector of Police,
Namakkal Police Station,
Namakkal District.

... Respondents

Prayer in 1858 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's son Thiru.Vallu @ Vallarasu @ Pravin Kumar, Son of Easwaran, Male, aged about 19 years is



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presently lodged in Central Prison at Salem and has been detained under Act 14/82 as a Sexual Offender vide detention order dated 17.06.2022 on the file of the 2nd respondent herein, made in C.M.P.No.17 Sexual Offender/2022 (M1), dated 17.06.2022 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner .. Mr.E.C.Ramesh
for Ms.V.Dhanalakshmi

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

COMMON ORDER

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

This common order will now govern the captioned three 'Habeas Corpus Petitions' [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of convenience and clarity].

2. For the sake of convenience and clarity, 'H.C.P.No.1333 of 2022' shall be referred to as 'I HCP', 'H.C.P.No.1644 of 2022' shall be referred to as 'II HCP' and 'H.C.P.No.1858 of 2022' shall be referred to as 'III HCP'.



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3. Mr.K.T.S.Sivakumar, learned counsel for petitioner in 'I HCP', Mr.K.Kannan, learned counsel for petitioner in 'II HCP', Mr.E.C.Ramesh, learned counsel representing Ms.V.Dhanalakshmi, learned counsel on record for petitioner in 'III HCP' and Mr.R.Muniyapparaj, learned Additional Public Prosecutor (assisted by learned counsel Mr.M.Sylvester John), for respondents in all 3 HCPs are before us.

4. The detenus in the captioned three HCPs are co-accused in the ground case being Crime No.303 of 2022 for alleged offences under Sections 392, 376(D) and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with 66(E) of Information Technology Act, 2000. The respective mothers of the detenus have filed captioned HCPs.

5. In all three captioned HCPs detention orders have been made by jurisdictional Collector / District Magistrate [2nd respondent who shall hereinafter referred as 'detaining authority' for the sake of convenience and



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clarity]. All three detention orders are dated 17.06.2022 and bear Reference

Nos.C.M.P.No.19/SEXUAL OFFENDER/2022 (M1),

C.M.P.No.18/SEXUAL OFFENDER/2022 (M1), and

C.M.P.No.17/SEXUAL OFFENDER/2022 (M1) in I, II and III HCPs respectively.

6. A careful perusal of the ground case brings to light that the alleged occurrence was on 19.05.2022 and it further comes to light that the allegation is gang rape, videographing the same for the purpose of holding a threat of uploading the same if divulged. We make it clear that we do not express any opinion on the merits of the matter as we are informed that charge sheet has been filed in the trial Court and trial is progressing.

7. As regards the three impugned detention orders, all three counsel made submissions which are identical. As regards 'II HCP' alone one additional point was made. The grounds on which the challenge to the impugned detention orders are predicated are as follows:

(i) No bail application has been filed by the detenus but



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the detaining authority proceeds on the basis that there is a strong chance (good chance) of bail being granted.

(ii) Similar case referred to as regards imminent possibility of being enlarged on bail is an order dated 04.02.2022 in CrI.O.P.No.2773 of 2022 on the file of this Court but it is actually not a similar case as there is no allegation *qua* Section 392 of 'IPC'.

(iii) The petitioner sent a representation and there is delay in considering the representation.

(iv) As regards the 'II HCP', advertent to the grounds of detention given in the Form of booklet and more particularly advertent to pages 87 and 88 of the booklet which contains list of properties sent to Magistrate (Form-91), it was submitted that Tamil translation of the same has not been furnished.

8. Responding to the above, learned Additional Public Prosecutor made submissions a summation of which is as follows:



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(i) The main offence is Section 376 of 'IPC' and regular bail has been granted in several cases where the main offence is allegedly under Section 376 of 'IPC' and therefore the subjective satisfaction of the detaining authority cannot be found faulted with.

(ii) The two cases cannot be said to be dissimilar as except Section 392 of 'IPC' which deals with punishment for robbery other offences are same. It is submitted that main offence is Section 376 of 'IPC', therefore the comparison is fair and good enough to arrive at a subjective satisfaction.

(iii) There is no delay in considering the representation as list of dates and events regarding the representations is as follows:

Representation dated	--	06.07.2022
Representation received dated	--	08.07.2022
File submitted on	--	11.07.2022



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Under Secretary dealt with on	--	11.07.2022
Deputy Secretary dealt with on	--	11.07.2022
Minister dealt with and file received on	--	13.07.2022
Rejected letter prepared on	--	13.07.2022
Rejection letter sent to the detenu on	--	14.07.2022

Govt. Holidays falls on: 09.07.2022, 10.07.2022

9. With regard to the point urged in 'II HCP' it was pointed out that the list of properties sent to Magistrate vide Form-91 is in tamil and only one sentence which says that the property was directed to be produced in the Court on a working day is in English, in other words it was pointed out that the list is in Tamil.

10. We have carefully considered the rival submissions.

11. As regards the first point, we have no difficulty in accepting the contention of the learned Additional Public Prosecutor that it is not as if no regular bail is granted in cases of alleged offences under Section 376 of 'IPC'.



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A specific argument that charge sheet has been filed in the cases on hand and therefore default bail under Section 167(2) of 'Code of Criminal Procedure 1973' [hereinafter 'Cr.P.C.' for brevity] is not available does not hold water as regular bail is not/cannot be granted in cases of an alleged offence under Section 376 of 'IPC'.

12. As regards similar case, as rightly pointed out by the learned Additional Public Prosecutor, except Section 392 of 'IPC' which deals with punishment for robbery, the main offence being Section 376 of 'IPC' is the same. There is another view of looking at this aspect of the matter. This aspect of the matter shows that this Court has granted bail, i.e., regular bail in a case of alleged offence under Section 376 of 'IPC'. Therefore, we cannot find fault with the detaining authority for arriving at the subjective satisfaction that there is a good chance for the petitioner to get regular bail. This also answers the first point. As regards the cases being dissimilar we have no difficulty in accepting the submission of the learned Additional Public Prosecutor that except Section 392 of 'IPC' the main offence under Section 376 of 'IPC' stays. We deem it appropriate to add that we have



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repeatedly held that this point has to be considered on a case to case basis and there cannot be a standard formula for such cases. We have examined this point on the basis of facts and circumstances of this case, the nature of alleged offences and we find that the comparison is good enough to arrive at a subjective satisfaction.

13. This takes us to the third point pertaining to considering the representation and purported delay in considering the representation as chronology placed before us by the learned Additional Public Prosecutor (extracted and reproduced elsewhere *supra* in this order) brings to light that there is really no delay in considering the representation and this point also does not enure to the benefit of the petitioners.

14. This takes us to the point raised by learned counsel in the 'II HCP' i.e., list of properties sent to Magistrate furnished in the booklet does not contain a tamil translation. A scanned reproduction of page 1 of this list is as follows:



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[illegible]

A careful perusal of the above makes it clear that the entire list is in Tamil. The only directive on 21.05.2022 (over the page) saying that the property is directed to be produced at Court on a working day is in English



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and the endorsement that the case property was received on 15.06.2022 by the learned Judicial Magistrate Court alone is in English. To be noted this point is also to be tested on a case to case basis. On the facts and circumstances of the case and nature of the alleged offence we find that the document of which tamil translation has not been given does not really hamper the petitioners' right to make a representation. There is another perspective of this matter. The document and the contents are such that non furnishing of translation in a language with which detenu is conversant with is not such that it hampers the right of the detenu to make effective representation which is ingrained in Clause(5) of Article 22 of the Constitution of India. In the case on hand, entire list is in Tamil and therefore we have no difficulty in coming to the conclusion that there is no question of Tamil translation and the endorsement over the page being in English does not really hamper the rights of the petitioners in making effective representation.

15. Before proceeding further we remind ourselves that preventive detention orders have been made under 'The Tamil Nadu Prevention of



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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 each of the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) of 'Act 14 of 1982' and it turns on acting in a manner prejudicial to maintenance of public order. The expression '*acting in any manner prejudicial to the maintenance of public order*' has been explained in Section 2(a) of 'Act 14 of 1982' and with regard to those branded as sexual offenders the relevant sub-clause is Clause 2(a)(iv-B) and the same reads as follows:

'(iv-B) in the case of a sexual-offender, when he is engaged, or is making preparations for engaging, in any of his activities as a sexual-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order'

In the light of the aforementioned Section 2(a)(iv-B) read with definition of sexual offender under 2(ggg), which reads as follows:

'(ggg) "sexual-offender" means a person who commits



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or attempts to commit or abets the commission of any offence punishable under Sections 354, 376, 376-A, 376-B, 376-C, 376-D or 377 of the Indian Penal Code (Central Act XLV of 1860) or the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Tamil Nadu Act of 44 of 1998) or the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012)'

we have no difficulty in coming to the conclusion that the alleged offences are clearly likely to affect adversely maintenance of public order. In this regard we remind ourselves of the celebrated judgment of the Hon'ble Supreme Court in ***Ram Manohar Lohia vs. State of Bihar and others*** reported in ***AIR 1966 SC 740***. The relevant paragraphs 54 and 55, which read as follows:

'54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic



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happenings. Does the expression "public order" take in every kind of disorder or only some ? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder, They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other example can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than



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those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.'

16. A careful perusal of aforementioned paragraphs makes it clear as regards preventive detention jurisprudence an illustrative approach has been taken by the Hon'ble Supreme Court and three concentric circles theory has been propounded. When we apply illustrative approach, we find that the alleged offence and the manner in which the alleged offence has been committed, clearly shows that a case of gang rape does get escalated to maintenance of public order issue. Further more, applying the three concentric circles theory to the cases on hand leave us with the considered view that the cases on hand move from first larger circle of law and order to the second smaller concentric circle of public order in the light of explanation of the expression 'acting in any manner prejudicial to the



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maintenance of public order' under Section 2(a)(iv-B) of Act 14 of 1982 which has been alluded to and delineated elsewhere *supra* in this order.

17. We are informed that as regards one of the four accused in the ground case a preventive detention order dated 17.06.2022 bearing reference No.C.M.P.No.16/SEXUAL OFFENDER/2022 (M1) has been clamped and he is incarcerated and he or any relative / friend has not filed any HCP assailing the impugned detention order. To be noted this is brought to our notice by the learned Additional Public Prosecutor. To be noted, this is recorded/captured solely for completion of facts narrative.

18. Before we write the concluding paragraph of this order, we make it clear that the contents of this order shall not be construed as expression of any view or opinion on the merits of the matter. The contents of this order is for the limited purpose of testing the impugned detention orders and therefore the same shall have no bearing on the trial that is underway.



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19. In the light of the narrative, discussion and dispositive reasoning thus far, it comes to light that all the points exhorted by the learned counsel for petitioners in the captioned HCPs fail, i.e., do not find favour with us and we find that the impugned detention orders deserve to be sustained for reasons delineated supra, more particularly, reasons turning on public order phenomenon.

20. Ergo, the sequitur is, captioned HCPs are dismissed.

(M.S,J.) (M.N.K.,J.)
28.02.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

To

1.The Secretary,
Police (L & O-F) Department,
Fort St. George,
Chennai – 600 009.

2.The Secretary,

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Home, Prohibition and Excise (XVI) Department,
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- 7.The Inspector of Police,
Namakkal Police Station,
Namakkal District.
- 8.The Public Prosecutor,
Madras High Court,
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