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H.C.P.No.1349 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1349 of 2022

Govindaraj

S/o.Arumugam

..

Petitioner

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 Collector and District Magistrate
Kallakurichi District
Kallakurichi.
3. The Superintendent of Police
Office of Superintendent of Police
Kallakurichi District.
4. The Superintendent of Central Prison
Central Prison, Cuddalore
Cuddalore District.

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5. The Inspector of Police
Manalurpet Police Station
Kallakurichi 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 detention order in D.O.No.C2/21/2022 dated 18.05.2022 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's sister son Thiru.Vijayaraj, S/o.Nehru, Male aged about 31 years, the detenu now confined in Central Prison, Cuddalore before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Sivakumar
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 11.07.2022 by detenu's uncle assailing a 'detention order dated 18.05.2022 bearing reference D.O.No.C2/21/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the second respondent i.e., 'jurisdictional District Collector' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

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2. Suffice to say that the ground case is Crime No.119 of 2022 for alleged offences under Sections 366, 344, 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity], Sections 5(i) and 6 read with 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] and Sections 9, 10 of 'the Prohibition of Child Marriage Act, 2006 [No.6 of 2007]' [hereinafter 'Child Marriage Act' for the sake of convenience and clarity] on the file of fifth respondent i.e., jurisdictional Inspector of Police. To be noted, fifth respondent is Sponsoring Authority.

3. Mr.K.T.S.Sivakumar, learned counsel on record for habeas corpus petitioner raised several points in his campaign against the impugned detention order but three points find favour with us and therefore, we are not delving into these three points that were projected in the hearing before us. The three points that have found favour with us together with contra contention of learned Additional Public Prosecutor, our discussion, dispositive reasoning are as follows:



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(a) The first point turns on imminent possibility of detenu being enlarged on bail. The ground case which in any event is the solitary case which forms the substratum of the impugned detention order is now in trial stage on the file of Special Court for POCSO Act cases, Villupuram in Special Sessions Case No.74 of 2022. There is no dispute that the detenu has not moved any bail application. Impugned detention order says that the Sponsoring Authority received reliable information that relatives of detenu are taking steps to file bail application. Be that as it may, the Detaining Authority has relied on what according to the Detaining Authority is a similar case being order dated 16.11.2016 made by this Court (High Court) in CrI.O.P.No.21103 of 2016. It was argued that this criminal original petition is anticipatory bail and it is not a similar case as it does not pertain to POCSO Act and Child Marriage Act. Learned Additional Public Prosecutor in his effort to defend the impugned detention order submits that the Detaining Authority has arrived at subjective satisfaction based on information that



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relatives of detenu are taking steps to file bail application.

Learned Additional Public Prosecutor also vehemently submitted that the case relied on is not dissimilar. We have carefully considered the rival submissions. We find that the ground case and the case relied on by the Detaining Authority are not really similar cases and they are dissimilar. As rightly pointed out by the learned counsel for petitioner, order dated 16.11.2016 made by this Court in CrI.O.P.No.21103 of 2016 is an anticipatory bail order, there are no POCSO Act or Child Marriage Act offences. No bail application has been moved is the obtaining factual position and the same is not disputed. We are also conscious of the rigors of POCSO Act pertaining possibility of being enlarged on bail. In this view of the matter, we are convinced that subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of being enlarged on bail is afflicted by the legal vice of a comparison of dissimilar cases i.e., comparison of Apples and Oranges.

(b) The second point urged by learned counsel for



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petitioner is that the detenu sent a representation dated 09.06.2022 to the first respondent but the same has not been considered. In response to this, learned Additional Public Prosecutor submitted that it is incorrect to say that the representation dated 09.06.2022 has not been considered. Learned Additional Public Prosecutor placed before us the relevant file to demonstrate that the representation has been duly considered, the same has been rejected on 01.07.2022 and the rejection letter has been sent to detenu on 04.07.2022. A chronicle and a tabulation together with Government holidays is as follows:



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5.	Representation dated	---	20.06.2022
6.	Representation received dated	---	20.06.2022
7.	File submitted on dated	---	20.06.2022
8.	Under Secretary dealt with on	---	25.06.2022
9.	Deputy secretary dealt with on	---	29.06.2022
10.	Minister dealt with and file received on	---	01.07.2022
11.	Rejected letter prepared on	---	01.07.2022
12.	Rejection letter sent to the devers on	---	04.07.2022

Govt Holidays falls on:
25.06.2022, 26.06.2022.

S.No	Representation	Column 8 - 12
1	No of days	6
2	No of holidays	2
	Total delay days	7
	Total 7 days Delay	

Though representation has been considered and rejected ('not considered' as urged by the learned counsel for the petitioner) there is a clear seven days delay in considering the representation even if the public holidays are excluded. To be noted, 25.06.2022 and 26.06.2022 are Saturday and Sunday respectively. Therefore, delay in considering the representation which is a sanctus constitutional safeguard also enures to the benefit of the petitioner.



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(c) Similar case point alluded to supra i.e., order of this Court (to be noted, what according to the Detaining Authority is 'similar case' which we have not sustained) and orders of extension of remand at Page Nos.46 and 49 respectively are in English and translation of the same has not been provided. We are informed that the literacy level of the detenu is class 8 in School. Learned Additional Public Prosecutor responded to this argument by saying that orders are terse and simple. We take into account literacy level of detenu and come to the conclusion that it certainly afflicts the rights of detenu to make an effective representation. To be noted, the order of this Court in anticipatory bail application being order dated 16.11.2016 made in CrI.O.P.No.21103 of 2016 is in English, Tamil translation has not been provided. This according to us certainly hampers and afflicts the detenu's constitutional rights to make an effective representation. To be noted, this constitutional safeguard is ingrained in clause 5 of Article 22 of Constitution of India.



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4. Aforementioned three points find favour with us in the light of narrative, discussion and dispositive reasoning supra. The sequitur is, impugned detention order is liable to be dislodged by answering the habeas corpus prayer in affirmative.

5. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.05.2022 bearing reference D.O.No.C2/21/2022 made by the second respondent is set aside and the detenu Thiru.Vijayaraj, aged 31 years, son of Nehru is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

6. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

02.02.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

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

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To

1. The Government of Tamil Nadu
Represented by its Secretary
Police (L&O-F) Department
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate
Kallakurichi District
Kallakurichi.
3. The Superintendent of Police
Office of Superintendent of Police
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4. The Superintendent of Central Prison
Central Prison, Cuddalore
Cuddalore District.
5. The Inspector of Police
Manalurpet Police Station
Kallakurichi District.
6. The Public Prosecutor
High Court, Madras.

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