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HCP No.1405 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

Coram

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

H.C.P.No.1405 of 2022

Vilvanathan

.. Petitioner

-VS-

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
W7 Anna Nagar All Women Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records in connection with the detention order passed by the second respondent dated 19.05.2022 in Memo.No.119/BCDFGISSSV/2022 against the petitioner Son Jayasurya, Male, aged 24 years, S/o.Vilvanathan, who is confined at Central Prison, Puzhal, Chennai and set aside the same



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and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 19.07.2022 assailing a 'detention order dated 19.05.2022' (hereinafter 'impugned Detention Order' for the sake of convenience and clarity) made by the 'second respondent / jurisdictional Commissioner of Police' (hereinafter 'Detaining Authority' for the sake of convenience and clarity). To be noted, fourth respondent, who is the jurisdictional Inspector of Police (SHO) is the sponsoring authority. It is also to be noted that Ms.B.Barani, Inspector of Police, W7 Anna Nagar All Women Police Station, Anna Nagar, Chennai – 40 is present in Court instructing the learned Additional Public Prosecutor Mr.R.Muniyapparaj.



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2. Mr.S.Senthilvel, learned counsel for petitioner submits that father of the detenu is the HCP petitioner who has been detained vide the impugned Detention Order on the premise that he is a 'Sexual Offender' within the meaning of the definition of 'Sexual Offender' vide 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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. Short facts will suffice. Short facts are that there is one adverse case and a ground case. The adverse case is Crime No.07 of 2021 on the file of the All Women Police Station, Thousand Lights, Chennai. The ground case is Crime No.21 of 2022 on the file of the fourth respondent. The adverse case is for alleged offences under Sections 366, 343, 376(3) of 'Indian Penal Code, 1860' (hereinafter 'IPC' for the sake of brevity) and Section 6 r/w 5(1) of 'Protection of Children from Sexual Offences Act, 2012' (hereinafter 'POCSO Act' for the sake of brevity). The ground case inter-alia is for an alleged offence under Section 366 IPC; that one Ammu who is a single parent



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has two daughters studying in class 11 and class 9. We refrain ourselves from mentioning the names of the two children with the intention of masking the names; that Ammu gave a police complaint that one of her daughters had been sexually assaulted by the neighbour (detenu); that the fourth respondent enquired into the matter and the ground case was put in place; that the detention order i.e., impugned Detention Order came to be made when the detenu was incarcerated; that the detenu was incarcerated i.e., remanded to judicial custody on 23.04.2022; that the captioned HCP has been filed assailing the impugned Detention Order; that as already alluded to, father of the detenu is the HCP petitioner.

4. Learned counsel for HCP petitioner, notwithstanding very many grounds in the support affidavit projected three points in his campaign against impugned Detention Order and the same are as follows:

(a) The detaining authority had fallen in error in arriving at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail as he has not moved bail application.



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(b) Translation copy of the remand order dated 24.04.2022 is incorrect (page 129 of the booklet is the remand order and page 133 is the Tamil translation).

(c) There is delay in consideration of the petitioner's representation dated 29.07.2022.

5. In response to the above arguments, learned State Additional Public Prosecutor made submissions, which are as follows:

(a) As regards imminent possibility, the detaining authority has taken into account the fact that the relatives of the detenu were taking efforts to move bail application.

(b) As regards the translation copy, it is incorrect to say that the translation is completely erroneous.

(c) The alleged delay in considering 29.07.2022 representation is explained in terms of trajectory which the matter took which is as follows:

<i>Representation dated</i>	-	<i>29/07/2022</i>
<i>Representation received on dated</i>	-	<i>01/08/2022</i>
<i>File submitted on dated</i>	-	<i>03/08/2022</i>
<i>Under Secretary dealt with on</i>	-	<i>03/08/2022</i>



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Deputy Secretariat dealt with on - 03/08/2022
Minister (Electricity, Prohibition and Excise)
dealt with on - 10/08/2022
Rejection Letter prepared on - 10/08/2022
Rejection Letter sent to the detenu -
10/08/2022

6. By way of reply, learned counsel for petitioner pressed into service **Rajammal** case (*Rajammal Vs. State of Tamil Nadu and Another* reported in 1999 1 SCC 417) to say that the delay in considering the representation is fatal *qua* the impugned Detention Order.

7. We carefully considered the submissions made on both sides and we now proceed to deal with the same one by one giving our discussion and dispositive reasoning.

8. As regards the first point of imminent possibility of the detenu being enlarged on bail, though there is no disputation that the detenu has not moved any bail application, the Detaining Authority in paragraph 4 at page 5 of the impugned Detention Order has clearly mentioned that the sponsoring authority has stated that it is learnt that the relatives of the detenu are taking steps to take him out on bail vide Crime No.01 of 2022 on the file of the fourth respondent.



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ORDER DATED: 24.04.2022

Accused produced. No complaints of ill-treatment sent of arrest and first
Legal Aid informed. Copy of arrest memo furnished to the accused.
Records perused. On satisfaction of record. Remanded till 06/05/2022.

Sd/-xxx
அரசு உதவித் துணைத் தலைவர்
(3-பேரவர்) சிறைத் துறைத் தலைவர்
Chennai.

(Certified to be true copy)

Typed by: SGP

Words: 2.08

Examiners: 1

Corrections: 0/0

K. Senthil Kumar
Supt. of Court

உள்ளமை நகல்

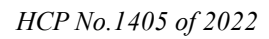
தி. திருச்சி

காவல் துறைமன்றம்

67, அமைத்து மன்றம் காவல் துறைமன்றம்
அமைத்து, சென்னை-600 040

True Copy

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தனக்குரிய பணியை நிறைவேற்றுவதில் உறுதியாக இருப்பதன் மூலம்



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11. It was pointed out that remand order was made in English by the jurisdictional Magistrate and his order saying that there is 'no complaint of ill treatment' has not been correctly translated as the translation says that 'சட்டவிரோதமாக நடத்தப்பட்டதாக புகார் எதுவுமில்லை.' We are unable to persuade ourselves to believe that this argument that Tamil translation lacks exactitude is good enough to dislodge the impugned Detention Order. In other words, it certainly conveys the sum and substance of remand order and we are also informed that the literacy level of the detenu is Class 10. This also is one facet of the matter. This means that the translation of the remand order is not such that it hampers the constitutional safeguard vested in the detenu qua making an effective representation.

12. As regards the third point on delay in considering the representation i.e., delay in considering the representation dated 29.07.2022, the chronicle i.e., chronology or trajectory the matter took as articulated by the State counsel i.e., Additional Public Prosecutor has already been set out supra. We also considered the principle in *Rajammal* case. We noticed that in *Rajammal* case, [K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India and others](#) reported in 1991 (1) SC 476 has been referred to affirmatively. The



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very elucidative paragraph in *Abdulla Kunhi* case has been extracted and reproduced in *Rajammal* case. A careful perusal of the *Abdulla Kunhi* case makes it clear that Honourable Supreme Court has clearly held that there can be no hard and fast rule with regard to considering delay. It has been clearly held that it depends on facts and circumstances of each case. It has also been held that there is no period prescribed either under the Constitution of India or under the concerned detention law, within which the representation should be dealt with. Therefore, the delay in considering the representation which is traceable to 'as soon as may be' expression occurring in Clause 5 of Article 22 of the Constitution of India has not been codified statutorily in terms of numeric expression. It has to be dealt with on a case to case basis. We carefully considered the facts and circumstances of the present case. There is no dispute that the adverse case pertains to a similar offence qua the ground case. This has been noticed by the detaining authority and the detaining authority has held that the investigation reveals that the detenu had committed a similar offence of sexual assault on the elder sister of the victim and ruined her life. Another aspect of the matter is, the detaining authority noticing this has clearly held that the detenu will further indulge in such activities in future and therefore there is a



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compelling necessity to pass the detention order with a view to prevent him from indulging in activities which are prejudicial to the maintenance of public order. To be noted activities prejudicial to maintenance of public order as regards a Sexual Offender vide Section 2 (ggg) of Act 14 of 1982 is statutorily explained in Section 2(1)(a)(iv-B) of Act 14 of 1982, which reads as follows:

'2(1)(a) (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.'

13. We also find that on the facts and circumstances of the case, as regards the trajectory the representation has taken, there are three intervening public holidays. They are 06.08.2022, 07.08.2022 (Saturday and Sunday) and 09.08.2022 (public holiday on account of Muharram). We find that the delay has been satisfactorily explained and we arrive at this conclusion on the basis of the facts and circumstances of the case on hand.



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14. Apropos the sequitur that follows is, all the three points canvassed by the petitioner in his campaign against impugned Detention Order do not find favour with us in the facts and circumstances of this case.

15. Further sequitur is, captioned HCP fails and the same is dismissed. There shall be no order as to costs.

(M.S., J.) (M.N.K., J.)
31.01.2023

Index:Yes/No
Neutral Citation : Yes/No
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To

- 1.The Additional Chief Secretary to Government,
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Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
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High Court, Madras.



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

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