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HCP No.1427 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.1427 of 2022

Saroja
W/o.(Late) Elumalai

... Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate of
Thiruvannamalai District,
Thiruvannamalai.
- 3.The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
All Women Police Station,
Thiruvannamalai & District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus call for the records in connection with the order of detention passed by the second respondent 12.02.2022 in D.O.No.06/2022-C2 against the petitioner brother Sekar, Male aged 51 years, S/o.Munusamy, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **P.N.PRAKASH, J.**]

The petitioner is the sister of the detenu, Sekar, S/o. Munusamy, aged 51 years, who has been detained by the second respondent by his order in D.O.No.06/2022-C2 dated 12.02.2022, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.



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WEB COPY 3. Learned counsel for the petitioner submits that Page Nos.91 & 97 in the booklet [Section 161 Cr.P.C., statement in the similar case] furnished to the detenu are illegible. Learned counsel further submits that the same adversely has affected the detenu's right of making an effective representation.

4.The learned Additional Public Prosecutor appearing for the State submitted that the detenu was arrested on 01.12.2021 and the charge sheet was filed on 29.03.2022 in Spl.S.C.No.28 of 2022 before the Special Court for POCSO Cases, Thiruvannamalai. The victim was examined-in-chief on 29.12.2022, but the accused was adapting dilatory tactics by withdrawing the memo of his counsel on record and not cross-examining the witness. Section 33(5) of POCSO Act, reads as under:

33.Procedure and powers of Special Court

.
.

(5)The Special Court shall ensure that the child is not called repeatedly to testify in the Court.



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5. The trial Judge is directed to bear in mind the mandate of Section 33 (5) of the POCSO Act and if the accused does not cross-examine the victim, he will thereafter, forfeit his right to recall the victim for cross-examination. The trial Court shall also bear in mind that the final report was filed on time and hence, the order passed in this Habeas Corpus Petition will not have any bearing and if in case, the detenu moves a bail application, the same shall be considered on its own merits and after considering the conduct of the accused.

6. When the documents furnished to the detenu are illegible, opportunity of clear understanding and making effective representation in keeping with Article 22(5) of the Constitution of India on such understanding is lost and the detenu is deprived thereof. This would vitiate the order of detention. For the aforesaid reasons, this Court would allow the present petition.

In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.06/2022-C2 dated 12.02.2022, passed by the second respondent is set aside. The detenu, viz., Sekar, S/o. Munusamy, aged 51 years, is



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directed to be released forthwith unless his detention is required in connection

with any other case.

[P.N.P., J] [N.A.V., J]
03.01.2023

Index: Yes/No
gm/ssr

To

- 1.The Special Court for POCSO Act cases,
Thiruvannamalai.
(Spl.S.C.No.28 of 2022)
- 2.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 3.The District Collector and District Magistrate of
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
- 5.The Superintendent of Prison,
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- 6.The Inspector of Police,
All Women Police Station,
Thiruvannamalai & District.
- 7.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 8.The Public Prosecutor,
High Court, Madras.

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