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H.C.P.No.1536 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1536 of 2022

S.Rani

.. Petitioner

Vs

- 1.The Additional Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Magistrate cum District Collector,
Nilgiris District, Udhagamandalam.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Superintendent of Police,
The Nilgiris District, Udhagamandalam.
- 5.The Inspector of Police,
Udhagamandalam Rural All Women Police Station,
The Nilgiris District, Udhagamandalam.

..

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 connection with the order of detention passed by the second respondent in detention order vide Cr.M.P.No.05/2022 dated

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08.06.2022 against the detenu Sivananda @ Siva, male, aged 60 years, son of Nanjundan confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the body of the detenu Sivanandha @ Siva, son of Nanjundan before this Court and set him at liberty.

For Petitioner : Ms.M.Kruthika
for Mr.K.Nivesh Kumar

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

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 08.06.2022 bearing reference Cr.M.P.No.05/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil



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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 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. The ground case which is the sole substratum of the impugned detention order is Crime No.05 of 2022 on the file of Udthagamandalam Rural All Women Police Station for alleged offence under Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.M.Kruthika, learned counsel representing counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.



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5. In the support affidavit qua captioned HCP, very many grounds have been urged/raised but in the hearing, Ms.M.Kruthika, learned counsel representing the counsel on record for petitioner predicated her argument on one point which found favour with us. This one point turns on subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail. To be noted, the case on hand is one where the preventive detention order has been clamped on the basis of a solitary case. Be that as it may, learned counsel drew the attention of this Court to paragraph 6 of the impugned detention order at Page No.8 as regards this subjective satisfaction and the relevant portion of the impugned preventive detention order in paragraph 6 reads as follows:

'6....The accused Thiru.Sivanandhan @ Siva has not filed any bail application. In a similar case registered in Devala All Women Police Station, The Nilgiris vide Crime No.02/2019 under Section 5(m), 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012, bail was granted to the accused Thiru.Nishanth, by the Court of Sessions Judge, Mahila Court (Fast Track Court), Udthagamandalam,



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The Nilgiris vide Cr.M.P.No.780/2019 dated 21.10.2019.'

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6. The above extract speaks for itself and therefore this Bench is not elaborating on the same. The bail order in CrI.M.P.No.780 of 2019 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Court), Udthagamandalam at Nilgiris has been furnished to the detenu as part of the grounds booklet and this order is at pages 52 to 55. We had the benefit of perusing this order. To be noted, in this order, one Nishanth is the petitioner and therefore this case shall be referred to as *Nishanth's* case. Adverting to the bail order in *Nishanth's* case, learned counsel Ms.M.Kruthika submitted that the facts are completely different and the ground case is one where there was a delay of one year in lodging of the complaint. To be noted, this is captured by the learned Sessions Judge in one of the paragraphs of the bail order in *Nishanth's* case. Be that as it may, that the Sessions Judge has captured this argument of the petitioner in *Nishanth's* case itself brings to light that this is one of the grounds on which bail has been sought in that case. To this extent, comparison of *Nishanth's* case with the solitary case which constitutes the sole substratum of the impugned preventive detention order is clearly flawed. It is a case of comparing cheese and chalk. This means that the impugned



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detention order deserves to be dislodged.

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7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 08.06.2022 bearing reference Cr.M.P.No.05/2022 made by the second respondent is set aside and the detenu Thiru.Sivanandhan @ Siva, son of Thiru.Nanjundan, 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.) (M.N.K.,J.)
11.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.

To

- 1.The Additional Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Magistrate cum District Collector,
Nilgiris District, Udhagamandalam.
- 3.The Superintendent,
Central Prison, Coimbatore.

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4.The Superintendent of Police,
The Nilgiris District, Udhagamandalam.

5.The Inspector of Police,
Udhagamandalam Rural All Women Police Station,
The Nilgiris District, Udhagamandalam.

6.The Public Prosecutor,
High Court, Madras.



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

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