



WEB COPY



H.C.P.No.2108 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
H.C.P.No.2108 of 2022

Abdhu,
S/o.Mohamed

... Petitioner/detenu

Versus

1.State of Tamil Nadu, represented by,
The Additional Chief Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Magistrate & District Collector,
Office of the District Collector,
Nilagiri District.

3.The Inspector of Police,
All Women's Police Station,
Devala, Nilagiri District.

4.The Superintendent of Police,
Central Prison,
Coimbatore.

5.The Superintendent of Police,
Nilagiri District.

... Respondents



H.C.P.No.2108 of 2022

WEB COPY

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for records pertaining to the order of detention passed by the 2nd respondent in No.Cr.M.P.No.3(Sexual Offender)/2022 dated 19.04.2022 detaining me as a Sexual Offender as defined under section 2(ggg) of Act 14/1982 and set aside the impugned order of detention passed under the Tamil Nadu Act 14 of 1982 and direct the respondents to produce the body of the detenu, namely, Abdhu, M/A-47 years, son of Mohamed, Indian resident of Panthalur Hatti, Nelliylam Post, Panthalur Taluk, Nilgiris District now confirmed in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.H.Maruthi Raj for
Mr.C.S.S.Pillai
For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor assisted by
Mr.M.Sylvestor John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the detenu assailing 'detention order dated 19.04.2022 bearing reference Cr.M.P.No.03(Sexual Offender)/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the third respondent is the sponsoring authority



H.C.P.No.2108 of 2022

and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.

2.Impugned detention order has been made under '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 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.There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.3 of 2022 on the file of Devala All Woman Police Station for alleged offences under Section 328 and 506(1) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(1), 5(n) and 5(j)(ii) of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual



H.C.P.No.2108 of 2022

matrix or be detained further by facts.

WEB COPY

4.Mr.H.Maruthi Raj, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for all respondents are before us.

5.The learned counsel for the petitioner raised several grounds attacking the Detention Order, but laid stress on grounds L, M and U, which were raised in this petition questioning the subjective satisfaction of the Detaining Authority, since the petitioner not filed bail petition, the real possibility of coming out on bail does not arise, further the similar case relied by the Detaining Authority is not similar.

6.The learned Additional Public Prosecutor submitted that the petitioner's contention to be rejected for the reason that the Detaining Authority finding the nature of offence and its impact on the society, its likelihood of disturbing public order, clamped Detention Order against the detenu.



H.C.P.No.2108 of 2022

WEB COPY

7.This Court considered the rival submissions and perused the materials available on record.

8.The ground (L) raised by the petitioner is to effect that the Detaining Authority had relied on the bail granted in a similar case in C.M.P.No.816 of 2019, dated 18.11.2019 to infer there is a real possibility of detenu coming out on bail. In the Detention Order, the same is referred in page 12 in para 6, which is as follows:-

“6) In a similar case registered at Nilgiris District, Gudalur Police Station Crime No.06/2019 under Section 5(j)(ii), 5(l)(n), 6 Prevention of Children from Sexual Offences Act, 2012 and Section 506(i) Indian Penal Code, bail was granted to the accused Mohan @ Kuttan by the Court of District Sessions and Fast Track Mahila Judge, Udthagamandalam in Crl.M.P.No.816/2019 dated 18.11.2019.....”

The similar bail order finds place in the booklet at page 73. On perusal of the same, it is found that the present case against the detenu is for offence under



H.C.P.No.2108 of 2022

Sections 328 and 506(i) of IPC and Sections 5(l), 5(n) and 5(j)(ii) of POCSO

Act. In the similar case, the offences are under Sections 5(j)(ii), 5(l), 5(n) and 6 of the POCSO Act. The IPC offences of Sections 328 and 506(i) of IPC are found missing. Further, considering the period of detention of 60 days, investigation completed, bail was granted in the similar case. Hence, it cannot be said both the cases are similar in nature.

9. For point raised in ground (M), it is submitted that no bail application was filed by the petitioner/detenu. The Sponsoring Authority confirms the petitioner/detenu had not filed any bail petition, but presumes that the petitioner/detenu might come out on bail by filing bail petition before the appropriate Court, which has been considered by the Detaining Authority and Detention Order passed based on mere presumption, which is as follows:-

“6)Hence, I presume that there is a real possibility of the accused Thiru.Abdhu coming out on bail by filing bail petition before the appropriate Court.....”

In the absence of any material to show detenu relatives taking steps to file bail petition, such presumption is not sustainable and that would surely vitiate the Detention Order. In an identical situation, in a case decided by a



H.C.P.No.2108 of 2022

Hon'ble Division Bench of this Court in “**Kavitha Velmurugan Versus The Secretary to Government of Tamil Nadu, Home, Prohibition & Excise Department, Fort St.George, Chennai-600 009** reported in **MANU/TN/2804/2018**” to which one of us was a party (Nirmal Kumar.J.), wherein it had held that there is lack of subjective satisfaction by the Detaining Authority at the time of passing the Detention Order with regard to possibility of detenu coming out on bail. The relevant portion of **Kavitha Velmurugan** case is extracted hereunder:-

“52.Be that as it may, in view of the fact that in respect of the ground case in Crime No.458/2017 under Section 395 read with 397 I.P.C., no bail application admittedly was filed on behalf of the detenu and in the absence of tangible materials to show before this Court that even though the detenu is not filing bail applications, his relatives takes place to file bail application before the appropriate Court, there is absence of subjective satisfaction about the possibility of the detenu coming out on bail and in this regard, there is lack of subjective satisfaction by the Detaining Authority at the time of passing the detention order dated 18.12.2017 and on this score, this Court set asides the detention order dated 18.12.2017 to prevent an aberration of Justice and to promote substantial cause of Justice.”



H.C.P.No.2108 of 2022

WEB COPY

10.As regards the point raised in ground (U), it is seen that in the Detention Order at page 14 in para 7, it is mentioned that the petitioner/detenu has a right to make representation to the Chairman, Advisory Board through the Superintendent, Borstal School, Pudhukottai. In this case, admittedly, the petitioner/detenu is a major aged about 47 years, he is confined in Central Prison, Coimbatore. The Additional Public Prosecutor has nothing to say since in the Detention Order it is mentioned wrongly. This clearly shows the non-application of mind by the Detaining Authority.

11.Further, right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority is impaired. The sequitur is, the impugned preventive detention order deserves to be dislodged.



H.C.P.No.2108 of 2022

WEB COPY

12.Ergo, the sequitur is, captioned HCP is allowed and impugned detention order dated 19.04.2022 bearing reference Cr.M.P.No.3(Sexual Offender)/2022 made by the second respondent is set aside and the detenu Thiru.Abdhu, aged 47 years, son of Thiru.Mohammed is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
18.04.2023

Index: Yes
Speaking
Neutral Citation: Yes / No
rsi

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

To

- 1.The Additional Chief Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Magistrate & District Collector,
Office of the District Collector,
Nilagiri District.



WEB COPY



H.C.P.No.2108 of 2022

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

- 3.The Inspector of Police,
All Women's Police Station,
Devala, Nilagiri District.
- 4.The Superintendent of Police,
Central Prison,
Coimbatore.
- 5.The Superintendent of Police,
Nilagiri District.
- 6.The Public Prosecutor,
High Court of Madras, Chennai – 104.

H.C.P.No.2108 of 2022

18.04.2023