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H.C.P.No.2106 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.2106 of 2022

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.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Mayiladuthurai, Mayiladuthurai District.
- 3.The Superintendent
Central Prison, Tieuchirappalli.
- 4.The Superintendent of Police,
Mayiladuthurai, Mayiladuthurai District.
- 5.The Inspector of Police,
All Women Police Station,
Sirkazhi, Mayiladuthurai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner namely Manikandan, son of Late Veerappan, vide detention order dated 03.09.2022 on the file of the 2nd respondent herein made in the proceedings in C.O.C.No.34/2022 quash the same and consequently direct the respondents to produce the body and person of the said detenu before



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this Court and thereafter set him at liberty from Central Prison, Tiruchirappalli.

For Petitioner : Mr.R.Subramanian
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 mother of the detenu assailing a 'preventive detention order dated 03.09.2022 bearing reference C.O.C.No.34/2022' [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 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



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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.25 of 2021 on the file of All Women Police Station, Sirkazhi, for alleged offences under Section 6 r/w 5(I) of Protection of Children from Sexual Offences Act, 2012 and 342, 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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 matrix or be detained further by facts.

4. Mr.R.Subramanian, learned 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.

5. In the support affidavit qua captioned HCP, several grounds have been urged/raised but in the hearing, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which finds favour with us and therefore



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there will be discussion and dispositive reasoning infra in this order on that point.

6. Solitary point raised by learned counsel for petitioner is, the detenu was produced before the jurisdictional Magistrate on 06.08.2022 and was remanded to judicial custody till 18.08.2022 vide the order made on the same day (06.08.2022). This order of the jurisdictional Judicial Magistrate has been furnished to the detenu as part of the grounds booklet at page No.69. However, the grounds of detention specifically says that the remand of the detenu was further extended upto 01.09.2022 but the order of extension of remand has not been furnished to the detenu. To be noted, the most relevant portion in this regard in the grounds of detention is in paragraph 4 and the same reads as follows:

*'4.....His remand period was upto 18.08.2022.
Further, his remand period extended upto 01.09.2022....'*

7. We had the benefit of perusing the grounds booklet which was served on the detenu. We find that 06.08.2022 order of remand has been furnished to the detenu but the order of extension of remand has not been furnished to the detenu.



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8. As the above point turns on records before us, learned Prosecutor really does not have much of a say. However, learned Prosecutor submitted that the order of remand dated 06.08.2022 will suffice but we are not inclined to sustain this submission as the order of extension of remand has been specifically adverted to by the detaining authority in the grounds of detention. This means that the sanctus right of the detenu to make an effective representation which is a constitutional guarantee ingrained in Article 22(5) of the Constitution of India has been impaired. Sequitur is, impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.09.2022 bearing reference C.O.C.No.34/2022 made by the second respondent is set aside and the detenu Thiru.Manikandan, aged 29 years, son of Thiru.Late Veerappan, 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.) (K.G.T.,J.)
06.06.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.



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- 6.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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