



WEB COPY



H.C.P.No.2068 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2068 of 2022

V.Sushmitha

.. Petitioner /
Wife of detenu

Vs.

1. The Secretary to Government
Home Department
Secretariat
Chennai – 9
 2. The Commissioner of Police
Salem City
 3. The Superintendent of Prison
Central Prison, Salem
 4. The Inspector of Police
Sooramangalam Police Station
Salem 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 relating

Page Nos.1/9



H.C.P.No.2068 of 2022

to the detention of the petitioner's husband Thiru.Velchathirian, son of Ammasi, male aged about 38 years who is presently lodged in Central Prison at Salem and has been detained under Act 14/82 as a sexual offender vide detention order dated 21.09.2022 on the file of the 2nd respondent herein, made in C.M.P.No.119/Sexual Offender/2022, quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner : Mr.E.C.Ramesh

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Sylvester John, Advocate

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 the wife of the detenu assailing a 'preventive detention order dated 21.09.2022 bearing reference C.M.P.No.119/Sexual Offender/Salem City/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



H.C.P.No.2068 of 2022

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.29 of 2022 on the file of Sooramangalam All Women Police Station for alleged offences under Sections 342, 354(B), 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Sections 66E and 67A of Information Technology Act, 2000. 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.E.C.Ramesh, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.



H.C.P.No.2068 of 2022

5. Notwithstanding very many grounds that have been urged in the habeas corpus petition support affidavit, Mr.E.C.Ramesh, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point has found favour with us. Therefore, we shall be dealing with that one point which has found favour with us.

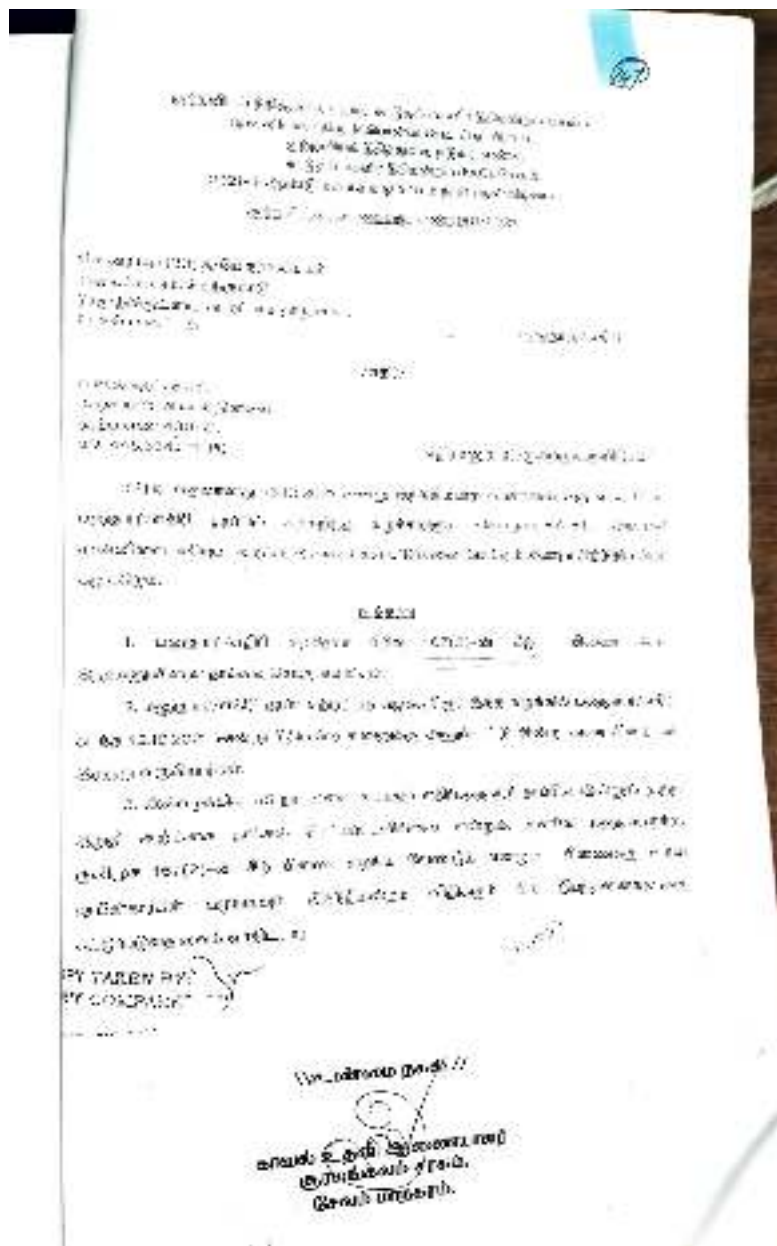
6. Learned counsel drew our attention to grounds booklet as well as impugned preventive detention order and submitted that Detaining Authority has relied on a bail order dated 15.12.2021 in CrI.M.P.No.1901 of 2021 in the case of Chinnaraja, son of Dharmalingam to arrive at the subjective satisfaction that there is an imminent possibility of detenu being enlarged on bail. Learned counsel submits that Chinnaraja's case is one of default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] and therefore, the same cannot be a touchstone or cannot be a basis for testing the imminent possibility of detenu being enlarged on bail.

7. We carefully perused the bail order in Chinnaraja's case which is at page 147 of the booklet and a scanned reproduction of the same is as



H.C.P.No.2068 of 2022

follows:





H.C.P.No.2068 of 2022

[illegible]

(ii) கனமான ஏதிரி ரூ.10,000/-க்கு (பொதுநலவியம், சட்டம், கல்வியியல், துறை, 1-1) அளிக்கும் தரவரிசைப்படி கட்டண செய்யப்படும்.

(4). மதுரை/வடிகி (மேலாமை) மேலாமையம் தலை குறியில் தீயாய்ச் சாகும் உரிசு
மணிக்கூறு எதிர்ப்புருத்தி வரவும் இவ்வாறாகவே ஆனால் 20 ரூபாய் வரவில்லாதது. மேலாம்
மேலாமையம்

(8) மதுரைமாவட்டம் இராமநாதபுரம் வட்டத்தில் உள்ள கிழக்குப் பகுதியில் உள்ள கிராமங்களின் எண்ணிக்கை குறைவாக இருப்பதால், அவற்றை ஒன்றித்து ஒரு வட்டமாக உருவாக்க வேண்டும்.

(1) மதுரை/சுட்டி சத்தியவாசு அவை முன்னாள் மாநில விவாகரத்து ஆணை யெண் 10

இந்த சந்தர்ப்ப எண்ணம் 2018-ம் ஆண்டு, ஏப்ரல் மாதம் 01-ஆம் நாள் அறிவிக்கப்பட்டது. செப்டம்பர்-இல் சின் எண்ணம் எட்டாக்கப்பட்டது. 2021-ம் ஆண்டு ஏப்ரல் மாதம் 01-ஆம் நாள் இன்று எண்ணம் அடைவதும், கட்டப்பட்டது.

தேய்வனது நடுவர்.
எடுத்துப் பரவித் தீயவனது
மேயர்.

COPY TAKEN BY: _____
 COPY COMPAILED BY: _____



18-112-2022
 18-5-2022
 19-5-2022
 19/11/2022

XEROX COPY

W. H. H. H.

8. The above order speaks for itself. It is clearly a default bail order as the prosecution has not filed charge sheet though it is well past 65 days in that case. Comparing a default bail and an order under Section 167(2) of

Page Nos.6/9



H.C.P.No.2068 of 2022

Cr.P.C with a regular bail application under Section 439 of Cr.P.C treating the two as similar is clearly a case of comparing Apples and Oranges.

Therefore, we have no difficulty in coming to the conclusion that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is clearly flawed and the sequitur is, impugned preventive detention order deserves to be dislodged.

9. Ergo, captioned HCP is allowed. Impugned detention order dated 21.09.2022 bearing reference C.M.P.No.119/Sexual Offender/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Velchathirian, aged 38 years, son of Thiru.Ammasi 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.)

05.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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

Page Nos.7/9



H.C.P.No.2068 of 2022

To

WEB COPY

1. The Secretary to Government
Home Department
Secretariat
Chennai – 9
2. The Commissioner of Police
Salem City
3. The Superintendent of Prison
Central Prison, Salem
4. The Inspector of Police
Sooramangalam Police Station
Salem District
5. The Public Prosecutor
Madras High Court, Chennai



WEB COPY



H.C.P.No.2068 of 2022

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

gpa

H.C.P.No.2068 of 2022

05.06.2023