



H.C.P.No.2217 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

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

H.C.P.No.2217 of 2022

Amaravathi

.. Petitioner

Vs

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

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus calling for the records
relating to the proceedings of the 2nd respondent herein in

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Cr.M.P.No.28/2022 dated 05.08.2022 and quash the same and produce the detenu Manmatharasa, son of Chinnaraja, aged about 22 years, TPDA No.7410, now detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.P.Rajavel
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 detenu assailing a 'preventive detention order dated 05.08.2022 bearing reference Cr.M.P. No.28/2022' [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



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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.30 of 2022 on the file of All Women Police Station, Jayankondam, for alleged offences under Sections 366(A), 376(3), 376(2)(f)(n) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 5(1)(k)(n) 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. Mr.P.Rajavel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. After hearing Mr.P.Rajavel, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all the respondents, we are of the considered view that the captioned HCP is to be allowed. The reasons i.e., discussion and dispositive reasoning are as follows:

5.1 Adverting to impugned preventive detention order and more particularly paragraph 5 thereat, it was submitted that the detaining authority has arrived at subjective satisfaction qua imminent possibility of detenu being enlarged on bail by relying on a bail order dated 05.04.2014 in CrI.M.P. No.38 of 2014 (*Manivel's case*) on the file of Fast Track Mahila Court, Ariyalur. It was submitted that *Manivel's case* is not similar to the ground case;

5.2 The relevant portion in paragraph 5 as regards the comparison reads as follows:

'...In a similar case registered in Ariyalur District, Jayankondam, All Women P.S. Cr.No.03/2014 bail was



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granted by the Fast Track Mahila Court, Ariyalur in Cr.M.P.No.38/2014 dated 05.04.2014 to the accused Thiru.Manivel S/o.Ponnusamy who was remanded on 15.03.2014. Hence it is very likely of his (Thiru.Manmatharasa) coming out on bail.....'

5.3 As regards ground case, the details as can be culled out from the impugned preventive detention order are as follows:

'...On receipt of the complaint petition preferred of one Tmt.Sulochana case in Jayankondam, All Women Police Station Cr.No.30/2022, U/s. 366(A), 376(3), 376(2)(f)(n) IPC and 5(1)(k)(n) r/w 6 of Protection of Children from Sexual Offences Act, 2012 was registered by the aforesaid Special Sub Inspector of Police on the date of 09.06.2022 at 12.00 noon.....'

5.4 A careful perusal of *Manivel's* case and ground case makes it clear that the two are really not similar for reasons about which there is allusion infra.

5.5 Learned State Additional Public Prosecutor submitted to the contrary saying that the two cases are broadly similar as both cases arose under Protection of



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Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act' for the sake of convenience and clarity).

5.6 We had the benefit of perusing *Manivel's case* bail order which is at pages 68 and 69 of the grounds booklet. On considering the provisions of law, the learned Sessions Judge categorically mentioned that the offence in *Manivel's case* which is more serious in nature seems to have been not made out and it also comes to light that in *Manivel's case*, the age of the petitioner therein (65 years) has weighed in the mind of the learned Sessions Judge in gravitating towards exercising his discretion in favour of grant of bail.

5.7 Therefore, we have no hesitation in saying that *Manivel's case* and the ground case are not comparable for more than one reason. The reason about which there is allusions supra is the two cases are not similar. The comparison of one with other more so comparison for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Flawed exercise qua subjective



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satisfaction means impugned preventive detention order is
floored.

6. Though several points have been raised/urged in the support affidavit, in the hearing Mr.P.Rajavel, learned counsel for petitioner exhorted the above mentioned point that found favour with us, we are not entering upon a legal drill for considering the other points.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.08.2022 bearing reference Cr.M.P.No.28/2022 made by the second respondent is set aside and the detenu Thiru.Manmatharasa, male, aged 22 years, Son of Thiru.Chinnaraja, 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.)
24.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail

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authorities in Central Prison,Tiruchirappalli.

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To

- 1.The Secretary to Government
Prohibition and Excise Department,
Fort.St George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Ariyalur District.
- 3.The Superintendent of Police,
Ariyalur, Ariyalur District.
- 4.The Superintendent of Police,
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police,
All Women Police Station,
Jayankondam, Ariyalur District.
- 6.The Public Prosecutor,
High Court, Madras.

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

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