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H.C.P.No.2206 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

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

**THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

H.C.P.No.2206 of 2022

Thayammal  
W/o.Thangam

.. Petitioner

Vs.

1. The Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat  
Fort St.George  
Chennai-600 009.
2. The District Collector and District Magistrate  
Coimbatore  
Collector Office  
Coimbatore - 18.
3. The Superintendent of Police  
Central Prison - Coimbatore  
Coimbatore District.
4. State rep. by its  
The Inspector of Police  
Thondamuthur Police Station  
Coimbatore District.

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 17.09.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.27/S.O/2022/E1, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's son namely Senthilvel, S/o.Thangam, aged 26 years before this Ho'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.J.Jayan  
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 the detenu assailing a 'preventive detention order dated 17.09.2022 bearing reference Cr.M.P.No.27/S.O/2022/E1' [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 the impugned detention order has been made by second respondent.

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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. This solitary case which is the sole substratum of the impugned detention order is Crime No.161 of 2022 on the file of Thondamuthur police Station for alleged offences under Sections 5(l), 5(j)(ii) and 5(n) read with Section 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.J.Jayan, 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. In the support affidavit qua captioned HCP, several points have been raised / urged but in the hearing Mr.J.Jayan, learned counsel on record for petitioner predicated his campaign against the impugned detention order on one point which finds favour with us. This one point turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Elaborating on this point, learned counsel drew our attention to paragraph No.6 of the impugned detention order and most relevant portion of paragraph No.6 qua this point reads as follows:

*'.....Further Thiru.Senthilvel has not filed any bail petition before any appropriate Court in the case of Coimbatore District, Thondamuthur Police Station Crime No.161/2022 under Section 5(I), 5(j)(ii), 5(n) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. In similar case registered in Coimbatore City, All Women Police Station (West) in Crime No.05/2020 under Sections 5(I), 5(j)(ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(ii) Indian Penal Code, the conditional bail was granted to Thiru.Tamilselvan by the Sessions Judge, Special Court for Exclusive trial of cases under the Protection of Child from Sexual Offences Act, Coimbatore vide C.M.P.No.312/2020, dated 02.07.2020. Hence there is a real possibility of Thiru.Senthilvel to be released on bail by filing bail application before appropriate*



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*Court in the case of Coimbatore District, Thondamuthur Police Station Crime No.161/2022 under Section 5(I), 5(j)(ii), 5(n) r/w 6 of the Protection of Children from Sexual Offences Act, 2012.'*

6. Aforementioned bail order which has been relied on by the Detaining Authority has been furnished to the detenu as part of grounds booklet at Page No.51 and the petitioner in that case is one Tamilselvan. Therefore, we shall refer to that matter as Tamilselvan's case. We had the benefit of carefully perusing the bail order in Tamilselvan's case i.e., bail order dated 02.07.2020 in C.M.P.No.312 of 2020 vide AWPS West Cr.No.5/2020. We also had the benefit of perusing the bail petition which is at Page No.47. A careful perusal of bail petition and bail order brings to light that in Tamilselvan's case, bail has been sought under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] i.e., default bail and bail has been granted under Section 167(2) of Cr.PC i.e., default bail. Therefore, using a bail order which is a default bail order or in other words a mandatory bail as benchmark to arrive at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail is clearly flawed. It is an exercise akin to



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comparing Apples and Oranges. As the subjective satisfaction of the Detaining Authority qua impugned detention order is flawed, we have no difficulty or hesitation in saying that the impugned detention order deserves to be dislodged.

7. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.09.2022 bearing reference Cr.M.P.No.27/S.O/2022/E1 made by the second respondent is set aside and the detenu Thiru.Senthilvel, aged 26 years, son of Thiru.Thangam, 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.)

(S.M.,J.)

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Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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To

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High Court, Madras.



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**M.SUNDAR, J.,**  
**and**  
**SUNDER MOHAN, J.,**

mk

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