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H.C.P.No.2218 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.2218 of 2022

Kaviya

.. 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,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
Madukkarai Police Station,
Coimbatore 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 of the 2nd respondent in his proceedings vide
Cr.M.P.No.31/S.O/2022/E1 dated 19.10.2022 to quash the same and

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consequently direct the respondents to produce petitioner's husband (detenu) Palraj, aged 33 years, S/o.Mani before this Court, now confined in Central Prison, Coimbatore and set him at liberty forthwith.

For Petitioner : Mr.J.Jayan
for Mr.Camyles Gandhi

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 wife of detenu assailing a 'preventive detention order dated 19.10.2022 bearing reference Cr.M.P. No.31/S.O/2022/E1' [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



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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.370 of 2022 on the file of Madukkarai Police Station for alleged offences under Sections 5(I) r/w 6 and 15(1) of of Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act' for the sake of convenience and clarity) and Sections 376(3) and 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.J.Jayan, learned counsel representing the 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.J.Jayan, 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 In the impugned preventive detention order, subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail is set out inter-alia in paragraph 6 and the most relevant portion of paragraph 6 reads as follows:

'....In similar case registered in Coimbatore City, All Women Police Station (West) in Crime No.05/2020 under Section 5(l), 5(i)(ii) r/w 6 of 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 Protection of Child from Sexual Offences Act, Coimbatore vide C.M.P.No.370/2022



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under Section 5(l) r/w 6 and 15(1) of Protection of Children from Sexual Offences Act, 2012 and 376(3), 506(i) Indian Penal Code.....'

5.2 Learned State Additional Public Prosecutor submitted to the contrary by saying that Crime No.05 of 2020 on the file of All Women Police Station (West), Coimbatore is also under POCSO Act. We are unable to accept the submission of learned State Additional Public Prosecutor as *Tamilselvan's case* is one where default bail has been granted by the learned Sessions Judge under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity].

5.3 We had the benefit of perusing the bail application as well as the bail order in *Tamilselvan's case* which are at pages 76 to 80 of the grounds booklet served on the detenu.

5.4 The bail petition itself has been filed under



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Section 167(2) Cr.P.C. and the order of the learned Sessions Judge makes it clear that default bail has been granted.

5.5 As comparison is clearly flawed, we have no difficulty in saying that the subjective satisfaction arrived at by the detaining authority is also flawed. This means that the impugned preventive detention order deserves to be dislodged.

6. Though several points have been raised/urged in the support affidavit, in the hearing Mr.J.Jayan, 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. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.10.2022 bearing reference Cr.M.P.No.31/S.O/2022/E1 made by the second respondent is set aside and the detenu Thiru.Palraj, male, aged 33 years, Son of Thiru.Mani, is directed to be set at liberty forthwith, if not required in connection with



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any other case / cases. There shall be no order as to costs.

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(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 authorities in Central Prison, Coimbatore.

To

- 1.The Secretary to Government (Home)
Prohibition and Excise Department,
Fort.St George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
Madukkarai Police Station,
Coimbatore District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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