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H.C.P.No.2398 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2398 of 2022

Andal
W/o.Krishnan

... Petitioner/Mother of Detenu

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
St. George Fort, Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate
of Tiruvannamalai District,
Tiruvannamalai.

3.The Superintendent of Police,
Villupuram District, Villupuram.

4.The Superintendent,
Central Prison, Vellore.

5.The Inspector of Police,
Kilpennathur Police Station,
Kilpennathur, Tiruvannamalai District.

.. Respondents



H.C.P.No.2398 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 13.08.2022 in D.O.No.69/2022-C2 against the petitioner's son Thiru.Sudhakaran, aged about 33 years, son of Krishnan, Bajanai Koil Street, Bharathanthangal Village, Alampoondi Post, Gingee Taluk, Villupuram District, who is confined at Central Prison, Vellore, set aside the same and direct the respondents to produce before this Court and set him at liberty.

For Petitioner : Mr.S.T.Raja

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.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 mother of detenu assailing a 'preventive detention order dated 13.08.2022 bearing reference D.O.No.69/2022-C2' [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.



H.C.P.No.2398 of 2022

WEB COPY

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 are one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.214 of 2022 on the file of Kilpennathur Police Station for alleged offences under Sections 341, 324, 354(D) and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 7 read with 8 of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO' 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.



H.C.P.No.2398 of 2022

4. Mr.S.T.Raja, learned counsel 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. Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing predicates his campaign against impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail. Taking us through the impugned detention order and more particularly, sub paragraph (l) of paragraph 3 and paragraph 5, it was submitted that the detaining authority has relied on bail orders in Crl.M.P.Nos.667 of 2013 and 1227 of 2013 on the file of District and Sessions Court, Tiruvannamalai. A perusal of the detention order itself brings to light that both these Crl.M.Ps. were dismissed on 26.02.2013 and 22.04.2013, respectively. However, the detaining authority has relied on another bail application and order thereat being order dated 10.05.2013 in Crl.M.P.No.1382 of 2013 on the file of District and Sessions Court, Tiruvannamalai. Therefore, on the basis of bail orders which were dismissed, the detaining authority has arrived at subjective satisfaction



H.C.P.No.2398 of 2022

that there is imminent possibility of detenu being enlarged on bail. However, we also find that as regards two orders dated 26.02.2013 and 22.04.2013, though the impugned preventive detention order refers to District and Session Court, it does not even say which District and Session Court. This come across as non application of mind and therefore, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.08.2022 bearing reference D.O.No.69/2022-C2 made by the second respondent is set aside and the detenu Thiru.Sudhakaran, aged 33 years, son of Thiru.Krishnan, now detained in Central Prison, Vellore is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S.,J.)

(M.N.K.,J.)

27.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

rsi

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



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H.C.P.No.2398 of 2022

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

rsi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
St. George Fort, Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate
of Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Inspector of Police,
Kilpennathur Police Station,
Kilpennathur, Tiruvannamalai District.
- 6.The Public Prosecutor
High Court, Madras.

H.C.P.No.2398 of 2022

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