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H.C.P.No.2515 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

Coram

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

H.C.P.No.2515 of 2022

Jaya

.. Petitioner

VS

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The District Magistrate and District Collector,
The Nilgiris District, Udthagamandalam.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Superintendent of Police,
Nilgiris District.

5.Inspector of Police,
All Women Police Station,
Ooty Town, The Nilgiris District.

.. Respondents

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 connected with the order of the second respondent herein concerned in Cr.M.P.No.11/2022 dated 01.11.2022 and quash the order of detention passed therein by the second respondent herein against the detenu and consequently directing the respondents herein to produce the body and person of the detenu by name



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Sekar, aged about 49 years, son of Maduraimuthu, now detained at Central Prison, Coimbatore before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Sasikumar

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 01.11.2022 bearing reference Cr.M.P. No.11/2022' [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 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)'



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[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.8 of 2022 on the file of Udhagamandalam Town All Women Police Station for the alleged offences under Sections 376(3) and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(l), 5(j)(ii) 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.S.Sasikumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised/urged but in the hearing, Mr.S.Sasikumar, learned counsel on record for petitioner predicated his campaign



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against the impugned preventive detention order on one point and that one point turns on imminent possibility of detenu being enlarged on bail and the subjective satisfaction arrived at by the detaining authority in this regard.

6. A careful perusal of the grounds of impugned preventive detention order brings to light that the aforementioned subjective satisfaction has been arrived at by the detaining authority by relying on a bail order dated 22.03.2021 in CrI.M.P.No.194 of 2021 on the file of Sessions Judge, Magalir Neethimandram (FTMC), Udthagamandalam at Nilgiris (hereinafter '*Raja @ Dhandayuthapani's* bail order' for the sake of convenience). We had the benefit of perusing *Raja @ Dhandayuthapani's* bail order which is at pages 74 and 75 of the grounds booklet supplied to the detenu. A careful perusal of *Raja @ Dhandayuthapani's* bail order and more particularly penultimate paragraph thereat brings to light that in *Raja @ Dhandayuthapani's* case, co-accused was granted bail at the stage of investigation and that has weighed with the learned Sessions Judge in gravitating towards grant of discretionary relief of bail whereas in complete contradistinction, in the case of hand, the detenu is the lone accused. Therefore, comparison of *Raja @ Dhandayuthapani's* case with the case on hand for arriving



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at aforementioned subjective satisfaction is a flawed exercise. As the exercise is flawed, the sequitur is, subjective satisfaction is impaired. Further sequitur is, impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.11.2022 bearing reference Cr.M.P. No.11/2022 made by the second respondent is set aside and the detenu Thiru.Sekar, aged 49 years, son of Thiru.Maduraimuthu, 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.) (R.S.V.,J.)
19.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.



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2.The District Magistrate and District Collector,
The Nilgiris District, Udthagamandalam.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Superintendent of Police,
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5.The Inspector of Police,
All Women Police Station,
Ooty Town, The Nilgiris District.

6.The Public Prosecutor,
High Court, Madras.



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