



HCP(MD)No.391 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.391 of 2023

V.Thangam

: Petitioner

Vs.

1.State rep by its,

The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records of the second respondent in Detention Order in H.S.(M)Confdl.No.19/2023 dated 02.02.2023 (TPDA.No.7631/03.02.2023) and quash the same as illegal and consequently directing the respondents to produce the body or person of the detenu namely Venkateshwaran @ Venkatesh, S/o.Veyilumuthu aged about 19 years, who is now detained at Central Prison, Palayamkottai and set him at liberty.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

[Order of the Court was made by **R.SAKTHIVEL, J.**]

The mother of the detenu filed this 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] assailing the 'preventive detention order dated 02.02.2023 bearing reference H.S. (M)Confdl.No.19/2023 (TPDA.No.7631/03.02.2023)' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by the second respondent herein.



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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 called as 'Act 14 of 1982' for the sake of convenience and clarity] branding the detenu as a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3.There is no adverse case. The impugned preventive detention order has been passed based on a solitary case in Crime No.16 of 2023 on the file of Kovilpatti West Police Station for alleged offences under Sections 5(g), 5(l), 5(m) and 6 of the 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of convenience and clarity]. In this HCP, sponsoring authority has not been arrayed as one of the respondents. However, on perusal of records, it is seen that Inspector of Police, Kovilpatti West Police Station is the sponsoring authority. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the ground case.



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4.Mr.V.Thirumal, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.The petitioner has filed an affidavit in support of the present petition. In the support affidavit, the petitioner has raised various grounds against the impugned preventive detention order. Today, in the final hearing, learned Counsel for petitioner has attacked the impugned preventive detention order on the point that the detaining authority did not apply his mind ie., non-application of mind before passing the impugned preventive detention order. Further, the learned Counsel has submitted that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detainee being enlarged on bail is incorrect conclusion.

6.In this regard, learned Counsel drew our attention to relevant portion of paragraph 6 of grounds of detention and the same reads as follows:

'I am also aware that accused Venkateshwaran @ Venkatesh has tried to file bail petition before the appropriate Court in the ground



*case registered in Kovilpatti West Police Station
Cr.No.16/2023 u/s 5(g), 5(l), 5(m), 6 of POCSO Act,
2012.'*

7.Learned Counsel has submitted that sponsoring authority did not furnish any document or material to the detaining authority. In the absence of any document or material, the conclusion arrived by the detaining authority that the detainee has tried to file bail petition before appropriate Court in the ground case is non-application of mind and incorrect conclusion. Accordingly, the learned Counsel has prayed to set aside the impugned preventive detention order.

8.Per contra, learned Additional Public Prosecutor has submitted that the sponsoring authority had furnished documents and affidavit to the detaining authority. The detaining authority after careful perusal and consideration only came to the conclusion that the detainee has tried to file bail application in the ground case. Further, has submitted that detaining authority has clearly recorded his subjective satisfaction in the grounds of detention. Accordingly, he has prayed to dismiss the HCP.



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9.We have considered the submissions of both sides and perused the case file.

10.In the grounds of detention, the detaining authority has stated that the detenu has tried to file bail petition before the appropriate Court. In this regard, no material or document has been annexed in the grounds booklet. Learned Additional Public Prosecutor after placing the file before us has drawn our attention to an affidavit said to have been submitted by the sponsoring authority to the detaining authority. We have carefully perused the said affidavit. In the affidavit also, no material or document has been shown by the sponsoring authority to say that the detenu has tried to move bail application in the ground case.

11.In the absence of any material or document, the decision arrived at by the detaining authority is mere *ipse dixit*. Hence, we are of the view that the subjective satisfaction arrived at by the detaining authority is without any supporting evidence or material. It shows non-application of mind of the detaining authority. Hence, the impugned preventive detention order is to be interfered on the ground of non-application of mind of the detaining authority. Accordingly, we interfere with the impugned preventive detention order.



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12.In the result, this Habeas Corpus Petition is allowed. Impugned preventive detention order dated 02.02.2023 bearing reference H.S.(M) Confdl No.19/2023 (TPDA.No.7631/03.02.2023) made by the second respondent is set aside and the detenu Thiru.Venkateshwaran @ Venkatesh, son of Thiru.Veyilumuthu, aged 19 years, 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.

13.We are informed that, final report has been filed in the ground case. If any bail petition is filed before the trial Court, the trial Court shall consider the same on its own merits and as per law without any influence of this order.

[M.S.,J.] & [R.S.V.,J.]
04.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

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



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To

- 1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
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- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
H.C.P.(MD)No.391 of 2023

04.10.2023