



WEB COPY



H.C.P.No.1412 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.1412 of 2022

Joslin Vinila

Petitioner

v

- 1 State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009
- 2 The Commissioner of Police
The Greater Chennai City
Vepery, Chennai 600 007
- 3 The Superintendent of Prison
Central Prison, Puzhal
Chennai 600 066
- 4 The Inspector of Police
J-7 Velachery Police Station
Chennai

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue
a WRIT OF HABEAS CORPUS calling for the records relating to the detention



H.C.P.No.1412 of 2022

order in Memo No.BCDFGISSSV No.124/2022 dated 23.05.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband, viz. Nethaji Prabakaran, aged 31 years, S/o.Bose (late), the detenu, now confined in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner Mr.D.Gopikrishnan
For Respondents Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the wife of the detenu viz., Nethaji Prabakaran, aged 31 years, S/o.Bose (late). The detenu has been detained by the 2nd respondent by his order dated 23.05.2022 in BCDFGISSSV No.124/2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



H.C.P.No.1412 of 2022

3. The main ground that was urged by the learned counsel for the petitioner is that the detenu was aware of the fact that no bail petition has been moved by the detenu and in spite of the same, he had come to the conclusion that there is likelihood of the detenu coming out on bail, by relying upon the orders passed in CrI.M.P.Nos.21605 of 2019 and 6184 of 2018, which are not similar to the ground case.

4. In the present case, there are three adverse cases against the detenu and a ground case and the detenu had not moved any bail petition in the ground case. Insofar as the order passed in CrI.M.P.No.21605 of 2019 is concerned, there were no previous cases against the accused therein and the Court had also taken into consideration the fact that the accused had faced incarceration for nearly 43 days. Insofar as the order passed in CrI.M.P.No.6184 of 2018 is concerned, the Court took into consideration the fact that the accused therein had suffered incarceration for nearly 21 days. That apart, the offence for which, the FIR was registered against the accused therein is not similar to the offence that has been registered in the ground case in Crime No.251 of 2022. The detenu did not move any bail petition in one adverse case and also in the ground case and this was also not taken



H.C.P.No.1412 of 2022

into consideration by the detaining authority. The orders that were relied upon by the detaining authority cannot be considered to a similar case. Hence, the detention order suffers from non-application of mind.

5. We have carefully gone through the orders that were relied upon by the detaining authority, which shows that the orders that were relied upon by him, cannot be considered to be similar, which reflects non-application of mind.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.124/2022 dated 23.05.2022, passed by the 2nd respondent, is set aside. The detenu viz., Nethaji Prabakaran, aged 31 years, S/o.Bose (late), is directed to be released forthwith, unless his detention is required in connection with any other case.

[P.N.P., J.] [N.A.V., J.]
21.12.2022

gya

Issue order copy by 22.12.2022



H.C.P.No.1412 of 2022

To

WEB COPY

- 1 The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The Commissioner of Police
The Greater Chennai City
Vepery, Chennai 600 007
- 4 The Superintendent of Prison
Central Prison, Puzhal
Chennai 600 066
- 5 The Inspector of Police
J-7 Velachery Police Station
Chennai
- 6 The Public Prosecutor
High Court, Madras



WEB COPY



H.C.P.No.1412 of 2022

P.N.PRAKASH, J.
AND
N. ANAND VENKATESH, J.

gya

H.C.P.No.1412 of 2022

21.12.2022