



HCP(MD)No.1065 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 18.11.2022**

**CORAM**

**THE HON'BLE MR.JUSTICE M.S.RAMESH  
AND  
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

**H.C.P.(MD)No.1065 of 2022**

P.Veerabathra

.. Petitioner / son of the detenu

**Vs**

1. The State of Tamil Nadu,  
Rep. by the Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George,  
Chennai-9.
2. The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Madurai.
3. The Superintendent,  
Central Prison for Women,  
Madurai.
4. The Inspector of Police,  
Usilampatti Taluk Police Station,  
Madurai District.

.. Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to  
issue a Writ of Habeas Corpus, calling for the entire records relating to the



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detention order passed by the second Respondent in B.C.D.F.G.I.S.S.S.V.No.24/2022 dated 20.04.2022 and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Rani, wife of Pandi, aged 46 years, now confined at Central Prison for Women, Madurai, before this Court and set her at liberty.

For Petitioner : Mr.S.Mahendrapathy

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

### **ORDER**

#### **N. ANAND VENKATESH,J.**

The petitioner is the son of the detenu viz., Rani, wife of Pandi, aged 46 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.24/2022 dated 20.04.2022 holding her to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner focussed his argument on the



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ground, wherein, the detaining authority has taken into consideration the fact that the accused, who are similarly placed, have been granted bail by the competent Court.

3.The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot ipso facto satisfy himself regarding the imminent possibility of the detenu coming out on bail, merely on the ground that the accused, who are similarly placed have been granted bail.

4.The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in Rekha v. State of Tamil Nadu ((2011) 5 SCC 244) to substantiate his submission.

5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed before the NDPS Court, Madurai and the same has been taken on file in C.C.No.310/2022. It was further submitted that the case is now posted for hearing on 14.12.2022.



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6. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority, after being aware of the fact that the bail petition filed by the detenu was pending before the concerned Court, relied upon the order passed in CrI.M.P.No.212/2022 dated 23.02.2022 and came to a conclusion that there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case. Hence, the detention order suffers from non application of mind.

7. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

8. We have carefully gone through the detention order as well as the bail order passed in CrI.M.P.No.212/2022 dated 23.02.2022. The detaining authority was aware of the fact that the bail petition filed by the detenu was



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pending. However, the detaining authority came to a conclusion that there is likelihood of the detenu coming out on bail. That apart, the bail order relied upon by the detaining authority passed in CrI.M.P.No.212/2022 dated 23.02.2022 wherein bail was granted to the accused therein on the ground that the earlier cases against the accused therein had been disposed of and the accused had suffered incarceration for a long time. The order that was relied upon by the detaining authority cannot be considered to be a similar case since in the present case, there are three adverse cases which are pending and after the ground case was registered, the detention order was passed. In view of the same, we find that the subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

9. The issue that has been raised by the learned counsel for the petitioner is no longer *res integra* and it is covered by the judgment that has been cited by the learned counsel for the petitioner, which has been referred *supra*.



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**10.** The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

**11.** In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.24/2022 dated 20.04.2022 passed by the second respondent is set aside. The detenu, viz., Rani, wife of Pandi, aged 46 years, is directed to be released forthwith unless his detention is required in connection with any other case.

**[M.S.R.,J.] & [N.A.V.,J.]**  
**18.11.2022**

Index : Yes/No  
Internet : Yes  
PJJ



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5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
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**M.S.RAMESH,J.**

and

**N. ANAND VENKATESH,J.**

PJL

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