



H.C.P.No.1213 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

CORAM

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

H.C.P.No.1213 of 2022

Dhivya

.. Petitioner

Vs.

1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Avadi, Avadi City Police,
Office of the Commissioner of Police,
Avadi, Chennai - 600 054.

3.The Superintendent of Central Prison,
Central Prison II, Puzhal,
Chennai-600 066.

4.The Inspector of Police,
M-7, Manali New Town Police Station,
Manali New Town, Chennai.

.. Respondents



H.C.P.No.1213 of 2022

Petition filed under Article 226 of the Constitution of India, praying to

issue a WRIT OF HABEAS CORPUS to call for the records relating to the detention order *vide* Memo No.38/BCDFGISSSV/2022 dated 20.05.2022 passed by the second respondent and set aside the same and direct the respondents to produce the body of the detenu Madhankumar, S/o.Anbazhagan, aged 31 years, now confined in the Central Prison, Puzhal, Chennai, before this Court and set him liberty forthwith.

For Petitioner : Mr.Rajkumar Pandian
for Ms.P.Anusha Lakshmi

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by N.ANAND VENKATESH, J.]

The petitioner is the wife of the detenu *viz.*, Madhankumar, S/o.Anbazhagan, aged 31 years. The detenu has been detained by the 2nd respondent by his order in Memo No.38/BCDFGISSSV/2022 dated 20.05.2022, 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.



H.C.P.No.1213 of 2022

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.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner mainly contended that the detaining authority was aware of the fact that the detenu had not moved any bail, yet, the detaining authority came to a conclusion that there is a real and imminent possibility of the detenu coming out on bail and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.3 of the order is not supported by any materials. Therefore, the same also suffers from non-application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.



5. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any material that has been placed before the detaining authority. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred *supra*.

6. The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity



with Article 22 of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before



WEB COPY



H.C.P.No.1213 of 2022

a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

7. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non-application of mind on the part of the detaining authority.

8. In view of the above, the detention order suffers from non-application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.



WEB COPY



H.C.P.No.1213 of 2022

In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.38/BCDFGISSSV/2022 dated 20.05.2022, passed by the second respondent is set aside. The detenu *viz.*, Madhankumar, S/o.Anbazhagan, aged 31 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

J.]

[P.N.P., J.]

[N.A.V.,

03.01.2023

nsd

To

1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Avadi, Avadi City Police, Office of the Commissioner of Police,
Avadi, Chennai - 600 054.

3.The Superintendent of Central Prison,
Central Prison II, Puzhal, Chennai-600 066.

4.The Inspector of Police,
M-7, Manali New Town Police Station, Manali New Town, Chennai.

7/9



H.C.P.No.1213 of 2022

5.The Joint Secretary to Government,
Public, Law and Order Department, Secretariat, Chennai-9.

6.The Public Prosecutor, High Court, Madras.

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

nsd

H.C.P.No.1213 of 2022



WEB COPY



H.C.P.No.1213 of 2022

03.01.2023