
(2005) 07 MAD CK 0134
In the Madras High Court
Case No : H.C.P. No. 357 of 2005

Aajara

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2005) 07 MAD CK 0134

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : Parthiban, for I.C. Vasudevan, for the Appellant; Abudukumar Rajarathinam, Government Advocate (Crl.Side), for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Petitioner is the wife of the detenu by name Mohammed Basheer @ Basheer @ Basheeran, who was detained as drug

offender under sub-section (1) of section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest

Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) by the impugned

proceedings dated 03.03.2005 and she challenges the same in this petition.

2. After taking us through the grounds of detention and all other connected materials, the learned counsel appearing for the petitioner has raised the

following contentions; (i) that inasmuch as the detaining authority has not considered the order dated 28.02.2005 passed by the Presiding Officer,

Essential Commodities Court, Coimbatore, dismissing the bail application, the detention order is liable to be quashed on the non-application of

mind; (ii) para 4 of the grounds of detention was not properly translated in the Tamil version; (iii) there was delay in disposal of the representation

of the detenu; (iv) in view of discrepancy in the documents, which find place at pages 49 and 72 in the booklet supplied to the detenu, the

impugned order is liable to be quashed on the ground of non-application of mind.

3. We have carefully considered all the above contentions and we answer hereunder;

In so far as the first contention relating to failure to consider the dismissal of the bail application dated 28.02.2005 is concerned, no doubt, the bail

petition was filed before the Economic Offences Court, Coimbatore on 22.02.2005 and the same was dismissed by the Presiding Officer on

28.02.2005. The learned counsel appearing for the petitioner, heavily relying on the reasons stated in the last paragraph of the said order

vehemently contended that the sponsoring authority ought to have placed the same before the detaining authority and in turn, the detaining authority

ought to have considered the same one way or the other and failure to do the same, vitiates the contention order.

4. We are unable to accept the said contention for the following reason. The last paragraph of the said order refers that the accused / detenu had

number of previous cases on his record and also in possession of 1.200 kgs. of ganja. It further shows that he indulged in illegal activities till date

and he is a habitual offender. Though there is no reference to the said order dated 28.02.2005 in the grounds of detention, as rightly pointed out by

the learned Government Advocate (Criminal Side), all the above said details are available in the grounds of detention. In other words, we are

satisfied that the detaining authority had in mind all the above mentioned details at the time of passing of the detention order.

5. It is brought to our notice by the learned Government Advocate (Criminal Side) that the sponsoring authority sent its proposal to the detaining

authority on 28.02.2005, on which date the learned Presiding Officer dismissed the bail petition. It is worthwhile to refer the judgment of the

Supreme Court in Abdul Sathar Ibrahim Manik v. Union of India and Ors. reported in 1992 SCC CrL.1 wherein among other conclusions, the

direction in para 12(3) is relevant, which reads as under: ""If the detenu has moved for bail then the application and the order thereon refusing bail

even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody". The above conclusion of the Hon"ble Supreme Court makes it clear that even if there is failure to place the order passed in the bail petition, it does not amount to suppression of relevant materials. Here, we have already referred to the fact that the bail petition was dismissed only on 28.02.2005 and the sponsoring authority has also submitted its proposal on the same day i.e. on 28.02.2005. Even otherwise, as observed in the above referred decision of the Supreme Court, the conduct of the sponsoring authority in not placing the order of the Essential Commodities Court, does not amount to suppression of relevant material. We have already observed that even without reference to the said order, the detaining authority had all the required details / materials in its hand at the time of passing of the detention order. In such circumstance, the arguments of the learned counsel for the petitioner is liable to be rejected.

6. No doubt, the learned counsel for the petitioner heavily relied on a decision of the Division Bench of this Court in the case of H. Fathima v. The State Government of Tamil Nadu reported in 2001(3) CTC 400 Here again, as rightly pointed out by the learned Government Advocate (Criminal Side), the Division Bench, after taking note of the peculiar fact, namely, that the detenu was suffering from brain tumour and he was taking treatment regularly as stated in the order dismissing bail application, concluded that had this aspect been brought to the notice of the detaining authority, his subjective satisfaction would have been different and the detention order would not have been passed against the detenu considering his health condition. As discussed earlier, the same is not applicable to the case on hand. In other words, we are of the view that because of the health condition of the detenu, as observed in the order passed by the Additional Chief Metropolitan Magistrate, Economic Offences, Chennai, the Division Bench has arrived at such a conclusion and hence, the said decision is not applicable to the case on hand and the same is confined to the peculiar facts available in that case.

7. With regard to the second contention, namely, improper translation of para 4

of the grounds of detention, we have compared the English and

Tamil version of para 4 and we are satisfied that there is no defect as claimed by the learned counsel for the petitioner. Accordingly, the same is

liable to be rejected.

8. Coming to the third contention, namely, delay in disposal of the representation, on going through the details furnished by the learned Government Advocate (Criminal Side), we are satisfied that there was no delay at every stage as pointed out. On the other hand, if we exclude the intervening

holidays, we are of the view that there was no undue delay as claimed by the petitioner.

9. Coming to the last contention, namely, discrepancy in referring the name of the detenu at pages 49 and 72 of the booklet, here again, on a

perusal of the same, we are satisfied that there is no major discrepancy as claimed by the petitioner. As a matter of fact, at page 49 of the booklet,

the detenu has been described as Basheeran @ Basheer; whereas at page 72 of the booklet, he has been stated as Basheer @ Basheeran @

Mohammed Basheeran. It is not the case of the petitioner that the detenu has some other name as that of the names mentioned in the above pages.

Accordingly, the said contention is also liable to be rejected.

10. In the light of what is stated above, we do not find any error or infirmity for interference. Accordingly, the habeas corpus petition fails and the

same is dismissed.