

(1986) 10 MAD CK 0022
In the Madras High Court

Anbu	Vs	APPELLANT
Govt. of Tamil Nadu and Others		RESPONDENT

Date of Decision : 23-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) CriLJ 31

Hon'ble Judges : Ratnavel Pandian, J; Bellie, J

Bench : Division Bench

Judgement

Ratnavel Pandian, J.—This writ petition is filed by the detenu Anbu under Article 226 of the Constitution, seeking for the issuance of a writ of habeas corpus quashing the order of detention passed by the second respondent and setting him at liberty.

2. The impugned order of detention was passed on 8-1-1986 by the second respondent in exercise of the powers conferred on him u/s 3(1) of Tamil Nadu Act 14 of 1982, on drawing the subjective satisfaction on the materials placed before him, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, and the detenu was directed to be detained and kept in custody in the Central Prison, Madras.

3. Mr. Jagadeesan, learned Counsel appearing on behalf of the petitioners, would challenge the order of detention on the ground that the detaining authority has not applied his mind to the facts of the case, but he has confused himself about the fact as to whether the detenu was in jail or not at the time when the order was passed, and as such the said order is vitiated on the ground of non-application of mind.

4. In para 5-G of the affidavit, the petitioner has raised the following ground-

The detaining authority has not substantiated his contention that the detenu was on bail at that time of passing of the order of detention and the detenu was not supplied with a copy of the bail order along with the documents furnished to him.

It is not correct to say in the absence to the bail order that the detenu was on bail at the time of passing of the detention order. The subjective satisfaction of the detaining authority is reached without the awareness of this very relevant fact of (sic and the) detention order is to be vitiated.

By way of reply the second respondent would state as follows- -

Regarding the averment in para 5-G of the affidavit that the copy of the bail order ought to have been placed before the detaining authority it is submitted that the above contention is devoid of merits.

5. Now, we shall examine the above contentions of the petitioner and see whether the detaining authority had applied his mind to the fact as to whether the detenu was in jail or not at the time of passing the order of detention and then passed this order with awareness of the said fact.

6. In para 3 of the Order of Detention, it is stated as follows:

The culprit Anbu was remanded before the J.F.C.M. Chengalpattu on 23-12-1985 and now confined as remand prisoner in Sub Jail, Chengalpattu.

In the following sub-para it is stated as follows:

As a detaining authority, I am aware that Thiru Anbu is now on bail and that he would be proceeded with under normal law.

Thus, it is clear that the detaining authority, at the time of passing the impugned order, has stated in one place that the detenu was confined as remand prisoner in the Sub Jail, Chengalpattu at the time of passing the order, and in the succeeding sub-paragraph he has stated that the detenu was on bail at the time when the order of detention was passed. These contradictory versions in the detention order clearly indicate that there was a total non-application of mind on the part of the detaining authority at the time of passing the order, to the fact as to whether the detenu was in jail or on bail at that time, and we hold that this non-application of mind vitiates the order.

7. In the result, we quash the order of detention on the ground of non application of mind on the part of the detaining authority, and direct the detenu to be set at liberty forthwith.