

(2005) 06 MAD CK 0029

In the Madras High Court

Case No : Habeas Corpus Petitions No. 289, 305, 318, 320, 322 and 332 of 2005

Azhagiri

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2005) 06 MAD CK 0029

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

Bench : Division Bench

Advocate : R. Subadra Devi, for the Appellant; Abudukumar Rajarathinam,
Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Since the point involved in all these petitions is identical, a common order is passed. For convenience, we shall refer the

details in H.C.P. No. 289 of 2005.

2. The petitioner challenges the detention order dated 23.01.2005, detaining the detainee by name Sivakami as a goonda 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.

3. Learned counsel appearing for the petitioner, after taking us through the grounds of detention and all other connected materials, has projected

that inasmuch as the detainee was arrested when she was in custody in another case for an offence u/s 302 IPC, which is grave in nature, the

detaining authority has not considered the said aspect at the time of passing the detention order and based his reliance only on the adverse case, in

which the offence is lesser in nature. According to the learned counsel, in the absence of any specific reference that the detainee is in remand in

respect of a graver offence and failure to take note of the said aspect vitiates the order of detention.

4. In support of her claim, she relied on three Division Bench judgments of this Court rendered in

(i) HCP No. 2270 of 2002 (R. Meena ..vs.. Commissioner of Police, Greater Chennai and another)

(ii) HCP No. 466 of 2004 (Subash ..vs.. State of Tamil Nadu, rep.by its Secretary, Department of Prohibition and Excise, Chennai-9 and

another) (dt.16.09.2004) and

(iii) 2005(2) Crimes 56 (D.Gomathi ..vs.. The Secretary to Govt. of India and others) (dt.08.03.2005).

5. The perusal of the relevant paragraphs make it clear that there is no reference to the graver offence while considering the imminent possibility of

the detainee coming out of bail. In all those cases, this Court, after finding that such factor is a relevant and failure to refer the same vitiates the

order of detention, quashed those detention orders. It is not in dispute that the said dictum is applicable to the cases on hand.

6. Accordingly, the impugned order of detention is set aside and the habeas corpus petitions are allowed. The detainee in HCP 289 of 2005 and

detenus in other petitions are directed to be set at liberty forthwith, unless they are required in connection with any other case.