
(2004) 02 MAD CK 0100

In the Madras High Court

Case No : Habeas Corpus Petition No. 1850 of 2003

Babu

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Prohibition Act, 1937 — Section 4(1), 4(1A)

Citation : (2004) 02 MAD CK 0100

Hon'ble Judges : V. Kanagaraj, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : R. Balakrishnan, for the Appellant; Abudukumar Rajarathinam, Govt. Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—This Habeas Corpus Petition has been filed by the petitioner, who is the detenu himself praying for a direction to call for

the records relating to the order of the second respondent dated 17.10.2003 in Order No. BDFGIS No. 512 of 2003 whereby the said authority

has detained the petitioner herein as a bootlegger under preventive detention invoking the provisions of Act 14 of 1982 on the ground that he is a

threat to public order, and to direct the respondents to produce the said detenu now detained in Central Prison, Chennai, before this court and to

set him at liberty.

2. The detention order passed by the detaining authority, the second respondent herein, the Commissioner of Police, Greater Chennai, would show

that the detenu is a bootlegger and he has already been involved in six other cases shown as adverse cases as that of the ground case and in all the

adverse cases registered against him, he got convicted and therefore, concluding that his presence in the society is a threat to public order, thus

invoking the provisions of Act 14 of 1982 and as per his order dated 17.10.2003, the petitioner has been detained under preventive detention,

testifying the validity of which the petitioner has come forward to file the above Habeas Corpus Petition.

3. Today when the matter was taken up for consideration in the presence of the learned counsel for the

petitioner and the learned Government Advocate on the Criminal Side appearing on behalf of the respondents, the learned counsel would point out

paragraph 4 of the grounds of detention wherein the detaining authority has remarked `that he is aware that Thiru Babu is in remand and there is

imminent possibility that he may come out on bail for the offences under Sections 4(1)(i) and 4(1-A) aaa of the Tamil Nadu Prohibition Act 1937

by filing bail application in the court."

4. The learned counsel for the petitioner would contend that there cannot be any imminent possibility of the detenu coming out on bail since no such

bail application has ever been filed or kept pending before the court prior to the passing of the detention order. More over, the very wording of the

sentence that there is imminent possibility that he may come out on bail itself is self-contradictory and it causes confusion besides depicting the non

application of mind on the part of the detaining authority, as a result of which, the order of detention gets vitiated.

5. We are in agreement with the arguments of the learned counsel for the petitioner and inclined to allow the Habeas Corpus Petition.

In result,

1. The above Habeas Corpus Petition succeeds and the same is allowed.

2. The order of detention dated 17.10.2003 is set aside.

3. Consequently, the petitioner-detenu is set at liberty forthwith, unless he is required in some other cause or case.