

(2006) 02 MAD CK 0070

In the Madras High Court

Case No : Habeas Corpus Petition No. 1209 of 2005

Babu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Citation : (2006) 02 MAD CK 0070

Hon'ble Judges : P. Sathasivam, J;J.A.K. Sampathkumar, J

Bench : Division Bench

Advocate : V. Parthiban, for the Appellant; M.K. Subramanian, Government Advocate (Crl.Side), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioner, who is the brother of the detenu by name Nagaraj, who was detained as a "Bootlegger" as contemplated under 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 detention order dated 07.10.2005, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner by drawing out attention to paragraph 5 of the grounds of detention contended that though the

detaining authority has stated that the detenu is in remand and has not filed any bail application, based on the same, the detaining authority has

passed the impugned order of detention. According to the counsel, even on

03.10.2005, learned Principal Sessions Judge, Vellore has dismissed the bail petition in CrI.M.P. No. 8025 of 2005. According to him, the said order was passed after hearing the Public Prosecutor. He further contended that inasmuch as this order was passed on 03.10.2005, the sponsoring authority, who is a party to the said order ought to have forwarded the same to the detaining authority, since the detention order was passed much later i.e. on 07.10.2005. He further contended that inasmuch as the detaining authority has failed to consider the relevant materials viz., the order of the Principal Sessions Judge, Vellore, dismissing the bail petition of the detenu, the ultimate order passed by him is vitiated.

4. It is not in dispute that in para 5, the detaining authority has stated that the detenu has not filed any bail application in the Court. On the other hand, the order produced by the learned counsel for the petitioner shows that the bail application in CrI.M.P. No. 8025/2005 filed by the detenu came to be dismissed even on 03.10.2005 by the Principal Sessions Judge, Vellore. As stated earlier, the said order was passed after hearing the Additional Public Prosecutor therein.

5. In such circumstances, the sponsoring authority, being a party to the said order, ought to have forwarded the said information and placed the order for consideration before the detaining authority. We sustain the objection raised by the learned counsel for the petitioner and on this ground the impugned order is liable to be quashed.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.