
(2004) 02 MAD CK 0107

In the Madras High Court

Case No : H.C.P. No. 1775 of 2003 and Cr. M.P. No. 170 of 2003

C. Padmavathy

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 02 MAD CK 0107

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

Bench : Division Bench

Advocate : S. Saravanavasan, for the Appellant; Abudukumar Rajarathimam, Government Advocate (Crl.side), for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—This Habeas Corpus Petition has been filed by the petitioner, who is the mother of the detenu Lokeshkumar,

son of Chandran, for a direction to call for records relating to the order of the 2nd respondent dated 22.8.2003 in No. 386 of 2003, whereby the

said authority has detained the detenu as a "Goonda" under preventive detention invoking the provisions of Act 14/1982 on ground that he is a

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

him at liberty.

2. We heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondents.

3. We are of the view that the order of detention is liable to be quashed on the very short ground that the detaining authority while passing the

order of detention has not considered that the detenu has not filed any bail

application since the date of incident is stated to be 12.7.2003 and he has also not considered the gravity of the offence of the ground case and whether there was a possibility for the detenu to file the bail application and there was also imminent possibility for him to come out on bail.

4. Learned Government Advocate produced a copy of order passed by the Division Bench of this Court in H.C.P.No.707 of 2003 dated

12.11.2003 ("Lawrende @ Gopi v. State of Tamil Nadu represented by its Secretary, Prohibition and Excise Department, Fort St.George.9")

wherein this court has held that though the detenu has not filed bail application, that the detaining authority has applied his mind and it could not

vitiating the order of detention. However, the decision is distinguishable, as we find that on overall circumstances of the facts of the case, the

detaining authority has not considered the gravity of the offence and also the further fact that the detenu has not filed the bail application for a

period of more than one month and hence the earlier decision of this court in H.C.P.No.707 of 2003 dated 12.11.2003 is distinguishable.

5. We find that in another decision of this court cited by the learned counsel for the petitioner in "Thangam .vs. State of Tamil Nadu, rep by

Secretary to Government, Prohibition and Excise Department, Chennai.9 and another" 2000(2) M.W.N (Cr.) 16 to which one of us is a party, this

court has held that mere statement of the detaining authority in the grounds of detention that there is a possibility of the detenu filing a bail

application and that in that event he is likely to come out on bail definitely would fall short of necessary material. This court has also held that where

the detenu had not filed any bail petition at all; and where there are no materials at all available for the detaining authority to conclude that there is

a compelling necessity to pass the order of detention, the order of detention would be vitiated. We are of the view that the decision of this Court in

the case of Thangam 2000 (2) MWN (Cr.) 16 cited supra would apply to the facts of this case.

6. We also find on the facts of the case, there was non application of mind on the part of the detaining authority on the question whether there is

imminent possibility for the detenu to come out on bail even though he has not filed the bail application. Since the detaining authority has not

considered the entire matter from a proper angle, viz., the nature of the offence,

gravity of the offence, non filing of the bail application, date of occurrence to arrive at the subjective satisfaction as to the compelling necessity and as to the possibility of filing the bail application and imminent possibility of coming out on bail to detain the detenu, we hold that the non application of mind on the part of the detaining authority on the relevant matters would vitiate the order, which is challenged in this petition and it is liable to be quashed and it is accordingly quashed.

7. The Habeas Corpus Petition stands allowed. The order of detention dated 22.8.2003 passed in the case of the detenu Lokeshkumar, son of

Chandran is set aside and the detenu is directed to be set at liberty forthwith unless he is required in some other cause or case. Consequently, Cr.

M.P. No. 170 of 2003 is closed.