
(2004) 03 MAD CK 0217

In the Madras High Court

Case No : Habeas Corpus Petition No's. 1890 of 2003

Chandira

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 03 MAD CK 0217

Hon'ble Judges : S.R. Singharavelu, J;P. Sathasivam, J

Bench : Division Bench

Advocate : T.S. Kannaiyan, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The wife of the detenu is the petitioner herein. The petitioner challenges the order of detention dated 7.8.2003 passed by the second respondent detaining her husband Devan as a bootlegger as contemplated u/s 3(1) of the Tamil Nadu Act 14/1982.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. Even at the foremost, the learned counsel for the petitioner after taking us through the grounds of detention and the order of the Principal Sessions Judge, Vellore dated 4.8.2003 passed in CrI.M.P.No.7509/2003 would contend that the impugned order of detention is liable to be quashed on the ground of non-application of mind by the Detaining Authority. It is seen that while dismissing the bail application on 4.8.2003 in CrI.M.P.No.7509/2003 a statement was made before the said Court that "The petitioner is likely to be detained under B.L. Act" (Act 14/1982). Admittedly, the detention order was passed on 7.8.2003. As rightly argued by the learned counsel for the petitioner a doubt was, therefore, liable to be raised, as to whether there was already a plan to detain the detenu

and the subsequent decision was merely a mechanical confirmation of that plan. Admittedly, there is no affidavit by the Sponsoring Authority with reference to the decision. It is clear from the language of the grounds that the order of the Principal Sessions Judge, Vellore in the bail application was a relied upon document. It was specifically put to the Detaining Authority, read by him and also supplied to the detenu. As argued, the Detaining Authority was duty bound to take this particular portion into consideration and dispel by holding that his decision to clamp detention order was made independently of any other thing and only on the materials supplied to him, after the affidavit of the Sponsoring Authority filed before him. Admittedly, that is not to be found anywhere in the order. Accordingly, it is clear that the Detaining Authority has failed to take into consideration the very substantial portion of the relied upon document and has not applied his mind. The learned counsel for the petitioner has also brought to our notice that in similar circumstance, a Division Bench of this Court in H.C.P.No.232/2003 dated 14.10.2003 quashed the similar detention order and allowed the petition.

4. In the light of what is stated above, the order of detention dated 7.8.2003 is liable to be set aside. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention dated 7.8.2003 is set aside. The detenu is directed to be set at liberty forthwith unless his detention is required in connection with any other case or cause.