
(2013) 06 MAD CK 0061
In the Madras High Court
Case No : H.C.P. No. 324 of 2013

D. Senthamil Selvi

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 03-06-2013

Acts Referred:

Citation : (2014) CriLJ 210 : (2013) 2 LW(Cri) 587 : (2013) 3 MLJ(Cri) 246

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The detenu has suffered an order of detention, having been branded as ""Bootlegger"" under the order of the 2nd

respondent dated 10.2.2013 made in C.O.C. No. 7 of 2013. Petitioner herein is the wife of the detenu. The detenu has come to the adverse

notice on 3 earlier occasions viz. (1) in Cr. No. 379 of 2012 of Anaikkaranchathiram Police Station for an offence registered u/s 4(1)(aaa) read

with 4(1-A) of T.N.P. Act, 1937, (2) in Cr. No. 750 of 2012 of Mayiladuthurai P.E.W. for an offence registered u/s 4(1)(i) , 4(1)(aaa) read with

4(1-A) of T.N.P. Act, 1937 and (3) in Cr. No. 478 of 2012 of Anaikkaranchathiram Police Station for an offence registered u/s 4(1)(aaa) read

with 4(1-A) of T.N.P. Act, 1937. The ground case alleged against the detenu is one registered on 22.1.2013 by Anaikkaranchatram Police

Station, in Cr. No. 20 of 2013 for offences u/s 4(1)(i), 4(1)(aaa), read with 4(1-A) of T.N.P. Act, 1937.

2. The first and foremost contention of the learned counsel for the petitioner in

attacking the order of detention is that the detaining authority has not at all applied his mind while arriving at the subjective satisfaction to pass the impugned order of detention and on this ground, the detention order is liable to be set aside. By taking us through the grounds of detention, learned counsel for the petitioner pointed out that at paragraph 5, the detaining authority has referred to the fact that the detenu had moved a bail application before the High Court, Chennai, in CrI. O.P. No. 3077 of 2013 and bail was granted on 8.2.2013 subject to furnishing the necessary sureties; that the detenu has not produced the necessary sureties so far and hence, he was not released on bail. After this statement, the detaining authority has proceeded to observe that there is a real and imminent possibility of the detenu coming out on bail by filing a bail application for the above case before the Higher Court. By referring to these statements, the learned counsel would vehemently argue that this is clearly non application of mind on the part of the detaining authority, while he himself has stated that bail had already been granted by the High Court, Chennai, what is the necessity for the detenu to file another bail application that too before the Higher Court. According to him, the detaining authority has mechanically passed the detention order and on this sole ground, the impugned order deserves to be quashed. In support of his contention, learned counsel for the petitioner relied on the decision of this Court *Arunachalam v. State of Tamil Nadu and Another* LNIND 2006 MAD 2399 : (2006) 2 MLJ (CrI.) 1188.

3. On the other hand, learned Additional Public Prosecutor would contend that the order of the detaining authority is a speaking order with reasoning and therefore, there is no ground to interfere with the same.

4. We have heard the learned counsel appearing for the petitioner as also the learned Additional Public Prosecutor appearing for the respondents and perused the records produced.

5. The order under challenge is one passed by the 2nd respondent branding the detenu as a "Bootlegger". There are three adverse cases and one ground case registered against the detenu. The learned counsel for the petitioner reiterated his contention that before clamping the order of

detention, the detaining authority has to record his satisfaction as to the necessity to detain the detenu by proper application of mind and that he

cannot pass a mechanical order by just accepting the statements of the

sponsoring authority. To examine this submission, it would be relevant to extract the relevant portion in paragraph 5 of the grounds of detention which is as follows:

5. ...I am also aware that he moved bail application before the Hon"ble High Court, Chennai, in CrI. O.P. No. 3077 of 2013 dated 8.2.2013 and

the same was granted subject to furnishing necessary sureties. I am also aware that Thiru. Durai, aged 40/213 S/o. Nagappan has not produced

the necessary sureties so far and hence not released on bail in the above Cr. No. 20 of 2013. Hence, I am satisfied that there is a real and

imminent possibility of his (Thiru. Durai, aged 40 of 2013 S/o. Nagappan) coming out on bail by filing a bail application for the above case before

the Higher Court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and

public health.

From a reading of the above paragraph, it is clear that bail had already been granted to the detenu and since he has not furnished necessary

sureties, he has not been released on bail. When such is the situation, the detaining authority has not applied his mind as to the fact that there is no

necessity or occasion for the detenu to file a bail application before the higher Court. Therefore, the impugned order of detention is vitiated on the

ground of non application of mind. Such was the view taken by a Division Bench of this Court in the decision Arunachalam v. State of Tamil Nadu

and Another (supra), wherein it was held that,

As rightly pointed out by the learned counsel for the petitioner, the detaining authority, having found that the bail application filed by the detenu is

pending before the High Court, Chennai, in CrI. O.P. No. 19569 of 2006, has arrived at a conclusion that it would be possible for the detenu to

come out on bail by filing bail application before the concerned Court or higher Courts, which amply shows his non-application of mind in arriving

imminent possibility of the detenu coming out on bail. It is not in dispute that when the bail application filed earlier is still pending, unless the said

petition is dismissed, the detenu cannot move another bail application. We are satisfied that the conclusion arrived at by the detaining authority

cannot be sustained and the detention order is liable to be quashed on the ground of non-application of mind and accordingly, the same is quashed.

Accordingly, on the ground of non application of mind, the impugned detention order passed by the 2nd respondent, detaining the detenu namely,

Durai, S/o. Nagappan, made in C.O.C. No. 7 of 2013 dated 10.2.2013 is quashed and the habeas corpus petition is allowed. The above named

detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.