
(2007) 07 MAD CK 0205

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 180 of 2007

M. Chellathai

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 07 MAD CK 0205

Hon'ble Judges : T. Sudanthiram, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; N. Senthur Pandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the wife of the detenu by name A. Murugan, who has been detained under the Tamilnadu Prevention of

Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum grabbers

and Video Pirates Act 1982 (Tamilnadu Act 14 of 1982), branding him as a ""SAND OFFENDER"". The said order of detention, dated

26.10.2006, passed by the second respondent is challenged in this habeas corpus petition.

2. Heard the learned Counsel for the petitioner as well as the learned Additional Public Prosecutor for the State.

3. Earlier, the petitioner had approached this Court challenging the same order of detention in HCP (MD) No. 419/2006 and this Court, on

consideration of the grounds raised therein, dismissed the petition by its order dated 19.0.2007. In the present petition, the specific ground, which

was not taken on the earlier occasion, on which the detention order is questioned is that the satisfaction of the detaining authority as to the real

possibility of the detenu coming out on bail is not supported by any materials and in the absence of any such materials the order of detention is

vitiated due to non-application of mind. To elaborate the above contention, the learned Counsel for the petitioner drew our attention to the

following portion stated in the grounds of detention, which reads as under:

4. I am also aware that Thiru. A. Murugan, has been remanded to judicial custody up to 27.10.2006 in Central Prison, Madurai in connection with

Alangulam Police Station Cr. No. 183/2006. He had filed a bail application in Cr.M.P. No. 2677/2006, on 18.10.2006 in the Hon"ble Court of

Principal District Sessions, Virudhunagar District, at Srivilliputtur, and the same was dismissed on 20.10.2006. I am also aware that there is a real

possibility of his coming out on bail by filing a bail application for the above case since in similar cases bails are granted by the concerned Court or

higher Courts after lapse of time.

4. Referring to the above reasoning of the detaining authority stated in the grounds of detention, the learned Counsel for the petitioner submits that

when the bail application filed by the detenu in Cr.M.P. No. 2677 was dismissed by the Principal Sessions Judge, Virudhunagar District at

Srivilliputtur, on 20.10.2006 and no further application was filed by or on behalf of the detenu, the question of the detenu coming out on bail in the

near future is not possible and in such circumstance, the reasoning of the detaining authority shows non-application of mind on his part, which

vitiate the order of detention. In support of the above submission, the learned Counsel for the petitioner relied on the judgment of the Supreme

Court in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, . In paragraph Nos. 7 and 12

of the said judgment, the Hon"ble Supreme Court has held as under:

7. The question is whether on the basis of such material, an order of detention was justified, even though the appellant was in custody on the date

of issuance of the order of detention. The principle in this regard is well settled. In Rameshwar Shaw Vs. District Magistrate, Burdwan and

Another, , this Court observed:

[12.] As an abstract proposition of law, there may not be any doubt that Section

3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail.... Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

...

12. The order of detention itself notices the fact that the appellant had moved an application for grant of bail before the Principal Sessions Court

which was rejected on 17-11-2004. the appellant had moved another bail application before the High Court which was withdrawn on 3-12-2004.

The detaining authority noticed that the appellant had not moved any bail application subsequently but it went on to state that there was imminent

possibility of the appellant coming out on bail by filing another bail application before the Sessions Court or the High Court since in similar cases

bails are granted by the Sessions Court after a lapse of time. The order of detention was passed on 15-12-2004 i.e. merely 12 days after the

dismissal of the bail application by the High Court. There is nothing on record to show that the appellant had made any preparation for filing a bail

application, or that another bail application had actually been filed by him which was likely to come up for hearing in due course.

5. The above cited decision has been referred to by the Hon"ble Supreme Court in the subsequent decision in A. Shanthi v. Govt. of T.N.

reported in (2006) 9 SCC 711 and in paragraph 4 of the said judgment it is observed as follows:

4. In similar circumstances, this Court in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and

Another, directed release of the detenu. Counsel for the State is unable to distinguish that judgment. This Court in T.V. Saravanan has held that the

imminent possibility"" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever.

There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was

likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention.

6. In the case on hand, as seen from the records, the bail application filed by the detenu in Cr.M.P. No. 2677/2006 before the was dismissed on

20.10.2006 and the detaining authority has passed the detention order on 26.10.2006 by sating that there is a real possibility of the detenu coming

out on bail by filing fresh bail application since in similar cases, bails are granted by the concerned Court or Higher Courts, after lapse of time. In

such circumstances, following the ratio laid down by the Hon"ble Supreme Court in the cases reported in T.V. Saravanan @ S.A.R. Prasana

Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , it has to be held that the "real possibility" of the detenu coming out on bail

is merely the ipse dixit of the detaining authority, unsupported by any material whatsoever. Further, there was no cogent material before the

detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail, after lapse of

time. Therefore, applying the principles laid down by the Supreme Court in the above referred to judgments, the order of detention passed by the

2nd respondent has to be set aside.

7. Accordingly, the habeas corpus petition is allowed and the order of detention dated 27.01.2007 passed by the second respondent in

No.Cr.M.P. No. 24 of 2006 quashed. The detenu is directed to be released forthwith, unless his custody is required in connection with any other

case.