

(2005) 08 MAD CK 0016
In the Madras High Court
Case No : H.C.P. No. 438 of 2005

Mahalingam

APPELLANT

Vs

Commissioner of Police and State

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2005) 08 MAD CK 0016

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : R. Rajasekar, for the Appellant; V. Arul, Government Advocate (Crl.Side), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The father of the detenu, namely, Kannan @ Kulla Kannan, challenges the impugned order of detention dated

23.03.2005, detaining him, as ""Goonda"" u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest

Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "" Tamil Nadu Act 14 of 1982"").

2. Even at the outset, learned counsel appearing for the petitioner, by drawing our attention to paragraph 4 of the grounds of the detention, would

submit that inasmuch bail application filed by the detenu was pending on the date of passing of the detention order, the same has not been

considered and referred to by the detaining authority and, as such, the order of detention is liable to be quashed on the ground of non-application

of mind.

3. The relevant portion from paragraph 4 of the grounds of detention is as follows:-

I am aware that Thiru Kannan @ Kulla Kannan is in remand in H1 Ennore Police Station Crime No.191/2005 and he has not moved any bail

application so far. I am also aware that there is imminent possibility of his coming out on bail by filing bail application since in similar cases bails are granted by the Sessions Court or Higher Courts after a lapse of time"".

4. It shows that the detenu has not moved any bail application till the date of passing of the detention order i.e., 23.03.2005. On the other hand, it

is brought to our notice that the detenu has filed a bail application before the District Sessions Judge, Chengalpattu in Crl.M.P.No.2702 of 2005

on 10.03.2005 and the same was adjourned to 15.03.2005. It is also his claim that at the request of the learned Public Prosecutor, again the said

application was adjourned to 22.03.2005, 29.03.2005 and 05.04.2005 and thereafter, in view of the order of detention, the said application was

dismissed as withdrawn. The above details show that on the date when the detaining authority has passed the impugned detention order, the

detenu, in fact, has filed the application for bail before the said Court and the same was pending. Though the said fact was known to the learned

Public Prosecutor, it is not clear why the sponsoring authority has not forwarded the relevant material to the detaining authority.

5. In the light of the above factual information, the statement made in paragraph 4 in the grounds of detention, namely, that the detenu has not

moved any bail application so far, shows non-application of mind on the part of the detaining authority, which vitiates the ultimate detention order

and on this ground, the detention order is liable to be quashed.

6. Accordingly, the impugned order of detention is quashed and the habeas corpus petition is allowed. The detenu is directed to be set at liberty

forthwith, unless he is required in connection with any other case.