

(1987) 07 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 3808 of 1987

Manjula

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-07-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) LW(Cri) 512

Hon'ble Judges : Ratnavel Pandian, J;David Annoussamy, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; G.R. Edmund, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Ratnavel Pandian, J.—The writ petition is filed by one Manjula under Art.226 of the Constitution of India, seeking the issuance of a writ of

habeas corpus, quashing the order of detention passed by the second respondent and setting at liberty the detenu Mohan, the petitioner's husband.

2. The impugned order of detention had been made by the detaining authority on 16.3.1987 in exercise of the powers conferred by S.3(1) of the

Tamil Nadu Act 14 of 1982, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order.

3. Though several grounds are raised questioning the validity of the order of detention Mr. P. Venkatasubramanian, Learned Counsel for the

petitioner, would confine his argument to the contention that since the detaining authority was not aware of the fact whether the detenu was in

custody or not at the time of signing the grounds of detention, though it is stated in the grounds of detention the detenu was on bail, the order

cannot be sustained and it has to be let aside. In support of his submission, he would rely upon a judgment of this Court rendered in Writ Petition

No 2239 of 1987 (Kuppu v. State of Tamil Nadu, Judgment dated 14.7.1987. No doubt, in paragraph 4 of the grounds of detention, the

detaining authority has stated that he was aware that Thiru Mohan was on bail and would be proceeded with under the normal law, and, however,

he was satisfied that his activities warranted his detention under Tamil Nadu Act 14 of 1982. But, at the foot of the grounds of detention signed on

16.3.1987 itself, on the date on which the order of detention was passed, it is stated as follows:

To Thiru Mohan, S/o. Rangasamy, No. 123, Annai Sathiya Nagar, Jaffarkhanpet, Madras-95, the detenu, through the Superintendent, Central

Prison, Madras-3.

In the Tamil version of the grounds of detention, it is clearly stated as follows:

Now, the question may arise as to whether this footnote stating that the detenu was inside the prison has been typed and cyclostyled after

16.3.1987 or on 16.3.1987 itself. If the foot-note had been made after 16.3.1987 and before it was served on the detenu, one could understand

that this foot note was made only after coming to know that the detenu has been secured and kept under detention in pursuance of the order of

detention. If the foot-note had been made even on 16.3.1987 on which date the order of detention was passed, then it has to be held that the

detaining authority had, without applying his mind to the fact whether the detenu was inside the prison or not, signed the grounds of detention. We

carefully went through the original of the cyclostyled copy of the grounds of detention now available on record, and it is clear to our minds that the

footnote should have been made even at the time when the detaining authority signed the grounds of detention, i.e., 16.3.1987. Further, there is no

indication as to when this foot-note was made, i.e., whether it was subsequent to the detaining authority signing the grounds of detection or not.

4. At this juncture, learned Public Prosecutor would put forth an argument stating that the detenu was secured at about 3 P.M., and that the

detaining authority might have signed the grounds of detention after coming to know that the detenu was already secured. We find at the foot of the

order of detention now available in the file an endorsement by the officer who

served a copy of the order on the detenu on 16.3.1987 after lodging the detenu in prison. That endorsement reads that a copy of the grounds of detention was served on the detenu only at 6:30 P.M. Therefore, if at all the detaining authority was informed of the detention of the detenu in pursuance of the order of detention, it was only after 6:30 P.M. and not before. As we have pointed out earlier, a careful examination of the entire grounds of detention and the foot-note made therein would show that the foot-note should have been written along with the grounds of detention, and not separately. Hence, the submission made by the learned Public Prosecutor that the detaining authority might have signed the grounds of detention after coming to know of the detention of the detenu in prison is beyond one's comprehension, and it cannot be accepted in the absence of any other material indicating that the detaining authority had signed the grounds of detention only after being aware of the fact that the detenu had been lodged in prison. As we have now come to the conclusion that the foot-note "" "" should have been typed and cyclostyled even on 16.3.1987, probably simultaneously with the detention order, we have no other go except to hold that the detaining authority was not quite sure as to whether the detenu was inside the Prison or not and that he has mechanically signed the same.

5. For the reasons stated above, the impugned order of detention is set aside, and the detenu is directed to be set at liberty forthwith. The writ petition is allowed.