
(2001) 10 MAD CK 0017
In the Madras High Court
Case No : H.C.P. No. 836 of 2001

Moorthy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Citation : (2002) 2 LW(Cri) 765

Hon'ble Judges : S. Jagadeesan, J;P. Thangavel, J

Bench : Division Bench

Advocate : M. Nagalakshmi, for the Appellant; Thiru A. Navaneethakrishnan
Additional Public Prosecutor on behalf, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The detenu is the petitioner who had been detained as "bootlegger" under the Tamil Nadu Act of 1982.

2. Since the order of detention being challenged on the technical ground on the basis of non-application of mind, it is unnecessary to traverse the

facts in detail. In paragraph No.6 of the grounds of detention it is stated as follows :-

I am aware that there is an imminent possibility of him filing bail application or moving higher court seeking to enlarge him on bail. If he comes out

on bail, he is likely to indulge in such further prejudicial activities in future as well and therefore there is compelling necessity to pass an order of

detention under Tamil Nadu Act, 14 of 1982 against the individual with a view to prevent him from indulging in such prejudicial activities in future

It is the contention of the learned counsel for the petitioner that the imminent possibility of filing the bail application cannot be considered as the

imminent possibility of the detenu come out on bail only if the Detaining Authority had the subjective satisfaction that there is imminent possibility of

the detenu is to be enlarged on bail, then only the order of detention can be passed. She also placed reliance on the judgment of another Division

Bench in H.C.P. No. 691 of 2001 where the learned Judges had held as follows :-

Likelihood to be released on bill"" is different from ""Likelihood of his moving an application for bail

In fact the learned Division Bench Placed reliance on an earlier order in H.C.P. No. 11 of 2001 and found that the order of detention suffers from

non-application of mind and set aside the order of detention. Following the said principle we are also of the view that the impugned order of

detention suffers from non application of mind, since the imminent possibility of filing the bail application cannot be considered as the imminent

possibility of the detenu being released on bail.

3. According this Habeas Corpus Petition is allowed. The order of detention is set aside. The detenu is directed to be released and set at liberty

forthwith unless his presence is required in any other case.