
(2002) 04 MAD CK 0013
In the Madras High Court
Case No : H.C.P. No. 1842 of 2001

Punitha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Citation : (2002) 04 MAD CK 0013

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : I. Paul Nobel Devakumar, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—The wife of the detenu is the petitioner in this petition. The detenu by name Murugesan was detained as a bootlegger as contemplated under the Tamil Nadu Act 14 of 1982 pursuant to the impugned order of detention dated 30.10.2001 passed by the second respondent herein.

2. The said impugned order of detention was challenged by the learned counsel for petitioner on the following grounds:-

(i) The petitioner sent a pre-detention representation dated 12.10.2001 and the same was not considered by the detaining authority.

(ii) The detenu moved bail application before the Sessions Court, Chennai on 12.10.2001 and the same was dismissed on 19.10.2001. Hence, the

statement made by the detaining authority in paragraph 5(ii) of the grounds of detention that the detenu has not filed any bail application so far is an

incorrect statement and as such, the impugned order of detention is vitiated on

the ground of non application of mind.

(iii) The detenu applied for bail before this Court and the bail was granted on 31.10.2001. The said fact was not placed before the Advisory Board.

(iv) The detenu made a representation on 30.11.2001 which was rejected only on 26.12.2001. Hence, there is a delay in the disposal of the representation and the said delay vitiates the impugned order of detention.

3. We heard the learned Additional Public Prosecutor, who contended that the detaining authority has considered the pre-detention representation and rejected the same by making a reference in the grounds of detention itself. The detaining authority has done so only after calling for remarks from the sponsoring authority. He further contended that non placement of the bail order before the Advisory Board does not in any way vitiate the impugned order of detention because the order does not contain any reason in favour of the detenu which would weigh the mind of the Advisory Board while deciding the continuation of the preventive detention. Similarly, he also contended that the reference in paragraph 5(ii) of the grounds of detention that the detenu has not filed any bail application is factually correct especially, in the absence of any material to establish that the detaining authority or the sponsoring authority were aware about the moving of the bail application by the detenu before the Sessions Judge.

Insofar as the delay in the disposal of the representation is concerned, the learned Additional Public Prosecutor has furnished the particulars with regard to the movement of file and contended that there is no delay.

4. We carefully considered the arguments advanced by both the learned counsel. Insofar as the pre-detention representation is concerned, the copy of the same is available at page 45 of the booklet. The sponsoring authority's remark is also available at page 46 of the booklet. Hence, there is no dispute that the detenu was furnished with the copy of the representation as well as the copy of the remarks furnished by the sponsoring authority. In the grounds of detention in paragraph 5(i), the detaining authority has specifically mentioned that Thirumathi.Punitha, W/o Murugesan has given a petition objecting to the detention of her husband and the detaining authority was aware that the contents of the petition are not true.

From this it is clear that the detaining authority has considered the pre-detention

representation of the petitioner and called for remarks of the sponsoring authority and finally considered both and came to the conclusion that the statement made in the representation is not correct. Hence, it cannot be said that the pre-detention representation of the petitioner was not considered and disposed of.

5. Coming to the non placement of the bail order before the Advisory Board, we have perused the order of this Court granting bail. The order does not contain any specific reason in favour of the detenu as to why he was released on bail. The order only runs that this Court is of the view that in the given facts and circumstances encircling the case registered by the respondent, the bail application could be favourably considered.

While that be so, in the absence of any reason in favour of the detenu, the non placement of the bail order before the Advisory Board will not vitiate the impugned order of detention. The necessity of placing the bail order before the Advisory Board would arise only if the bail order contains any reason in favour of the detenu because such reason may or may not weigh in the mind of the Advisory Board while deciding the necessity of continuation of detention of the detenu. In such case, the non placement of the bail order may vitiate the order of detention. When that is not the case here, we are unable to accept the contention of the learned counsel for petitioner.

6. Insofar as the next ground urged by the learned counsel for petitioner that the statement made by the detaining authority in paragraph 5(ii) of the grounds of detention that the detenu has not filed any bail application so far is a non application of mind especially, when the detenu has moved for bail before the Sessions Court on 12.10.2001 and the bail application was dismissed on 19.10.2001. Here again, we perused the bail application and the order passed by the learned Sessions Judge. The respondent was shown as the State by Sub Inspector of Police, Tiruvalangadu. When the Sub Inspector of Police alone was made a party to the bail application, he might have received information from the Public Prosecutor with regard to the filing of the bail application. There is nothing on record to show that the sponsoring authority was informed about the filing of the bail application and the disposal of the same. In the absence of any material to establish that the sponsoring authority was aware about the filing of the

bail application by the detenu and consequently the detaining authority also was not informed, the statement pertaining to non filing of the bail

application by the detenu cannot be said to be an incorrect statement and consequently affected by non application of mind. Only in cases where

the sponsoring authority was aware about the filing of the bail application or the disposal of the bail application and the same was not placed before

the detaining authority and if statement was made as if no bail application was filed, the order can be said to be vitiated. Since it is not the case

here, we are unable to appreciate the contention of the learned counsel for petitioner.

7. Lastly coming to the ground of delay, the learned Additional Public Prosecutor furnished the following particulars. The representation of the

detenu dated 30.11.2001 was received by the first respondent on 4.12.2001. On 7.12.2001, the file was circulated. The Under Secretary,

Deputy Secretary as well as the Secretary signed the file on 10.12.2001 and the Hon"ble Minister rejected the representation on 14.12.2001.

Thereafter, the draft order was prepared and communicated to the detenu. From the above furnished particulars, we do not find any unexplained

delay in the disposal of the representation made on behalf of the detenu. Hence, we reject the said contention also.

8. For all the above reasons, we do not find any merit in the habeas corpus petition and the same is dismissed.