

(2004) 04 MAD CK 0073

In the Madras High Court

Case No : Habeas Corpus Petition No.177 of 2004

Shanthi

APPELLANT

Vs

District Magistrate and District Collector and The Secretary to
Government of Tamil Nadu, Prohibition and Excise
Department

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 394, 397, 399

Citation : (2004) CriLJ 3274

Hon'ble Judges : S.R. Singharavelu, J;P. Sathasivam, J

Bench : Division Bench

**Advocate : R. Srinivas, for the Appellant; A. Navaneethakrishnan, Assistant
Public Prosecutor, for the Respondent**

Final Decision : Dismissed

Judgement

S.R. Singharavelu, J.—Sundar was detained under Tamil Nadu Act 14 of 1982, after branding him as a Goonda by virtue of an order dated

10.12.2003, passed by the District Collector, Cuddalore in order to prevent him from indulging in any activities prejudicial to the maintenance of

public order and public peace.

2. Besides three adverse cases respectively under Sections 307, 399 and 302 IPC, a ground case was filed against the detenu for an offence u/s

394 read with 397 IPC and the date of occurrence of the ground case is 15.11.2003.

3. The learned counsel appearing for the petitioner drew our attention to para 5 of the grounds of detention, wherein it is mentioned that, ""there is

an imminent possibility of moving a bail and coming out on a bail in future, by filing bail application in the Court"" The learned counsel contended

that imminent possibility of moving a bail application and coming out on bail in future are distinct features, which cannot go together and therefore

one is inconsistent with the other showing the lack of application of mind and the subjective satisfaction of the detaining authority. In our considered

opinion, the two terms are of course distinct in its nature that, ""there is imminent possibility of moving a bail and coming out on bail in future. "" But,

the detaining authority had only contemplated upon the detenu's act of moving bail, which was considered to be imminently possible and although

coming out on bail in future was not termed as imminent possibility, the words "in future" adjoining to that sentence will not denote a longer distant

time as contended by the learned counsel for the petitioner; but, in other words, it may also denote the immediately following feature of having

moved a bail application. Since among the two acts of moving bail and expecting an order, the latter is only future than that of the former, the word

"future" was used. It is in that light of the matter, there is no inconsistency in the above statement of the detaining authority.

4. The learned counsel for the petitioner again submitted that there was an adverse case u/s 302 IPC and the ground case was u/s 397 IPC and

how could there be an imminent possibility of coming out on bail in a murder case. In fact, para 5 of the grounds of detention contained both the

crime numbers of the ground case and the adverse case u/s 302 IPC and what we are concerned is only as to the contemplation of the detaining

authority and not as to the correctness of such contemplation.

5. Again, reliance was made upon the case of Amritlal vs. Union Government reported in 2001 S.C.C. (Cri) 147, which was a case wherein the

likelihood of the detenu moving an application for bail alone was mentioned in the grounds of detention. While considering that the grounds of

detention did not mention that the detenue was likely to be released on bail, then such difference was canvassed. But, in this case, both the

likelihood of moving of bail application and likelihood of coming out on bail were considered and in that way the facts of that case may not be

applicable to the present facts.

6. Further, reliance was placed upon a case of Dharmar vs. State of Tamil Nadu reported in 1995 (1) LW (Cri.) 333, in which the adverse case

was for a more graver offence than the ground case. In para 8 of the judgment it

was mentioned that the detaining authority has not only adverted to the factum of detenu being lodged in prison as a remand prisoner in a serious offence of murder covered by adverse case No. 2 in that case.

But, in this case, such consideration was made in the grounds of detention by mentioning that he was in remand both in the adverse case and in the ground case and the possibility of moving a bail application and coming out on bail in those two cases was contemplated. Thus, the facts are different from that case.

7. Further argument of the learned counsel for the petitioner is that, at page 158 of the paper book, in the arrest memo, in column No.6 it was mentioned that the detenu was sent to remand and in the Tamil translation at page 159 of the paper book it was mentioned in such column as if the detenu was kept in lock-up after examination. This according to him is not a correct translation. His further submission was that entitlement of a translated copy has nothing to do with the prejudicial aspect. According to him, irrespective of the prejudice caused, he is entitled for the correct translation of the memo of arrest. We have to mention that lock-up is in the process of remand and especially at 7.30 p.m. as found at page 158 of the paper book, the detenu could not have been sent to remand and therefore was kept in lock-up and the reasoning is quite sound. In so far as entitlement of translation copy, it is based upon the principle that the detenu should be given an opportunity to make effective representation. In that way the prejudice has a relevance; we cannot say that irrespective of the prejudice, entitlement of the translation copy is to be there. For the above reasons, there is no prejudice and the order cannot get vitiated upon this point alone.

Similar defective translations were brought to our notice at pages 162 and 163 of the paper book, which are concerned with the remand order dated 15.11.2003 and the remand extension order dated 28.11.2003. Tamil translation of the remand extension order is found in a separate sheet and one cannot expect that the remand order and the remand extension order in the Tamil version to be found in the same page as found in the English version. What is required is a translation copy and that has been supplied in this case. There is a similar mistake in the English version as remand for arrest explained"" instead ""reason for arrest explained"" and this

has been again supplied in the Tamil version and as already mentioned, this do not cause any prejudice and the gist of the matter is well provided in both English and in Tamil version. Excepting this, there is no other point for consideration; hence, this petition is dismissed.