
(2006) 10 MAD CK 0177
In the Madras High Court
Case No : H.C.P. No. 696 of 2006

Suneka

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3(1), 4(1), 5(1), 6(1), 7(1)

Citation : (2007) CriLJ 1695

Hon'ble Judges : P.K. Misra, J;J.A.K. Sampathkumar, J

Bench : Division Bench

Advocate : Abudukumar Rajaratinam, for the Appellant; P. Kumaresan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard Mr. Abudu kumar Rajaratinam for the petitioner and Mr. P. Kumaresan, Additional Public Prosecutor for the respondents.

2. The Habeas Corpus petition has been filed by the wife of the detenu, who has been detained under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

3. In the grounds of detention, reference has been made to the order of conviction of the detenu on 29-10-2001 under Sections 4(1) and 8(a) of the Immoral Traffic (Prevention) Act, 1956. There is also reference to alleged involvement of the detenu in Anti Vice Squad P. S. Cr. No. 37 of 2006 registered under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of ITP Act. Besides the aforesaid two adverse cases, the order of detention is based on the alleged involvement of the detenu in Anti Vice Squad P. S. Cr. No. 44 of 2006 registered under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of ITP Act. In paragraph 4 of the grounds of detention, the detaining authority has referred to as under:

4. I am aware that Thiru Sheriff Mohammed Ali alias Jamal alias Sheriff is in remand in Anti Vice Squad Police Station Crime No. 44/2006 and he has moved two bail applications before the Principal, Sessions Court, Chennai in CrI. M. P. Nos. "4007/2006 ad 4050/2006 and the same are pending. I am also aware that there is very likely of his coming out on bail, in the above case since in similar cases bails are granted by the same Court or Higher Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru Sheriff Mohamed Ali alias Jamal alias Sheriff is an Immoral Traffic Offender and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.

4. The contention, which is raised before this Court, on behalf of the petitioner is to the effect that even though the detaining authority has referred to the applications for bail filed in connection with Anti Squad Police Station Cr, No. 44 of 2006 (ground case) and concluded that such person is likely to be released on bail, there is no reference to the fact that detenu was in custody in connection with adverse case, namely, Anti Squad Police Station Crime No. 37 of 1996, wherein, it was alleged that the detenu has committed similar offences. Learned Counsel for the petitioner submitted that this clearly indicates non-application of mind on the part of the detaining authority and the order of detention is therefore vitiated. Learned Counsel for the petitioner has relied upon the decisions reported in 2006 (1) CTC 340 (Balasubramanian alias Subramanian alias Subbudu alias Subbu v. The Commissioner of Police, Madurai City) and 2004 MLJ (CrI) 829 (Anjalammal v. The State of Tamil Nadu).

5. Learned Additional Public Prosecutor appearing for the State, on the other hand, has submitted that even though there is no specific reference to filing of any bail application in connection with Crime No. 37 of 2006, since the offences committed on both the occasions are similar and since there is reference to commission of the offence in Cr. No, 44 of 2006, it must be taken that the detaining authority was aware of the alleged involvement of the detenu in earlier case and cannot be said that there has been non-application of mind.

6. Non-application of mind is on account of the fact that the detenu has been remanded in connection with two cases, but the detaining authority has referred to the possibility of the detenu being released on bail by referring to the bail Applications CrI. M.P. Nos. 4007 and 4050 of 2006, which had been filed in Cr. No. 44 of 2006. In other words, the detaining authority has not at all considered the possibility of the detenu being released in other case. Even if bail order would have been passed in Cr. No, 44 of 2006, the detenu would be still detained in

prison as no bail application had been filed in connection with the earlier case, i.e., Cr. No. 37 of 2006. The detaining authority has not at all applied his mind to the aforesaid aspect. As a matter of fact, almost on similar circumstances, the Division Bench in 2006 (1) CTC 340 (cited supra) had quashed such detention on account of the fact that the detaining authority had only referred to filing of bail application in one crime and there is no reference to filing of bail application in connection with other similar crime.

7. In view of the aforesaid, we are constrained to quash the order of detention, even though the allegations against the detenu were quite serious in nature and the detenu alleged to be a habitual offender. The Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.