
(2003) 12 MAD CK 0032
In the Madras High Court
Case No : H.C.P. No. 1534 of 2003

Suresh Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Citation : (2004) 1 LW(Cri) 394

Hon'ble Judges : R. Banumathi, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : N. Mohideen Basha, for the Appellant; A. Navaneethakrishnan, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The detention order dated 4.10.2003 branding the detinue as a ""Bootlegger"" is challenged before this Court in

this Habeas Corpus Petition filed by the niece of the detinue.

2. The two grounds that have been urged assailing the impugned order are:

i) The detention order has been passed on 4.10.2003. The pre-detention representation dated 27.9.2003, which was received on 29.9.2003 by

the Detaining Authority, has not been placed. Even then, the Detaining Authority has not chosen to refer to or rely upon while arriving at a

subjective satisfaction for passing the detention order.

ii) The bail application filed on 25.9.2003 in respect of the ground case on the basis of the instruction given by the Sponsoring Authority, the Public

Prosecutor stated no objection for grant of bail on 7.10.2003 and on the basis of no objection, the lower court granted bail and on the other hand,

on the basis of the report filed by the Sponsoring Authority, the Detaining

Authority passed the order of detention on 4.10.2003. So, in view of the different stand taken by the Sponsoring Authority before the two different fora, the detention order cannot be said to be valid.

3. We have heard the learned Counsel for the Petitioner on these points and the learned Additional Public Prosecutor as well.

4. In view of the judgment rendered by this Court in *Mani v. The State of Tamil Nadu*, rep. by the Secretary to Government, Prohibition & Excise

Dept., Fort St. George, Chennai-9 and Anr. reported in 2000 (1) MWN (Cri) 279, it is clear that the pre-detention representation dated

27.9.2003 was received by the Detaining Authority on 29.9.2003. In the pre-detention representation sent by the niece of the Petitioner herein, it

has been stated that the detainee has been arrested on 22.9.2003 itself and the arrest was shown only on 27.9.2003 and as such, it is an illegal

custody and there is a likelihood of the detainee being booked under the Tamil Nadu Act 14 of 1982. Even though the Detaining Authority on the

basis of the report filed by the Sponsoring Authority passed an order of detention on 4.10.2003 he has not chosen to refer to the pre-detention

representation in the detention order. Admittedly, the pre-detention representation has not been disposed of by the Detaining Authority. It is the

duty of the Detaining Authority to consider the representation of the niece of the detainee and find out as to whether there are any bona fides. While

arriving at a subjective satisfaction, the Detaining Authority has to consider the pre-detention representation sent by the niece of the detainee and

shall come to the conclusion with reference to the basis of such representation and if he finds that there is no basis, then the Detaining Authority

may accept the report of the Sponsoring Authority and subsequently, he can arrive at a subjective satisfaction to detain the detainee as a

Bootlegger. Admittedly, this has not been done. Therefore, non-consideration of the pre-detention representation dated 27.9.2003, which was

received by the Detaining Authority on 29.9.2003 would naturally vitiate the impugned order of detention.

5. In fact, on the second point, it is to be stated that the Sponsoring Authority has taken a different stand before the two different fora and on the

basis of the instruction given by the Sponsoring Authority, the Public Prosecutor stated no objection and the bail was granted on 7.10.2003. On

the other hand, the report has been filed by the Sponsoring Authority before the Detaining Authority requesting for the detention of detainee under

Tamil Nadu Act 14 of 1982 by branding her as a ""Bootlegger"". This also, in our view vitiates the detention order.

6. Consequently, the detention order is set aside. The habeas corpus petition is allowed. The detainee is directed to be set at liberty forthwith unless she is required in connection with any other case.