

(2004) 07 MAD CK 0018

In the Madras High Court

Case No : Habeas Corpus Petition No. 390 of 2004

Vasanth @ Arumbu

APPELLANT

Vs

The District Magistrate and District Collector and State

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Citation : (2004) 07 MAD CK 0018

Hon'ble Judges : V. Kanagaraj, J;S. Ashok Kumar, J

Bench : Division Bench

Advocate : Abudu Kumar Rajarathinam, Government Advocate (Crl. side), for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The daughter of the detainee is the petitioner herein. She has come forward to file the above petition praying to issue a

Writ of Habeas Corpus, calling for the records relating to the order in Cr.M.P. No. 8 of 2004 dated 14.2.2004 passed by the first respondent

herein, quash the same as illegal and further direct the respondents to produce the detainee, viz., Susila, W/o. Lakshmanan, who is now confined in

the Special Prison for Women, Trichirapalli, before this Court and set her at liberty forthwith.

2. The detenu has been detained on the ground that she was a Bootlegger under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate on the criminal side with no representation made on the part of the

petitioner. Learned Government Advocate on the criminal side reports that there are six adverse cases registered against the detainee.

4. On perusal of the records, it is comes to be known from page 14 of the typed set of papers that the detenue has filed a bail application before

the Court of Sessions Judge, Perambalur in Cr.M.P. No 500 of 2004 and the same was dismissed on 23.2.2004. But, in the grounds of detention,

this bail application is not even mentioned. However, in para.5 of the grounds of detention, the detaining authority has stated that "there is an

imminent possibility of the detenue filing a bail petition before the same Court or in the superior court". Therefore, it is clear that it is a case of

glaring example for non-application of mind on the part of the detaining authority, while passing the order of detention and no mention need be

necessary that the order of detention becomes vitiated in law and the preventive order of detention becomes liable to be quashed.

5. This Court's attention is also drawn to an earlier order of the Division Bench of this Court on a similar point dealing with the same in para.5 of

the said order dated 16.6.2004 made in HCP. No 214 of 2004, wherein it is held:

In C. CHITHAMBARA SELVI v. STATE OF TAMIL NADU REP. BY ITS SECRETARY, PROHIBITION & EXCISE DEPARTMENT,

FORT ST. GEORGE, MADRAS-9 AND ANOTHER reported in 1998 (2) MWN (Cri.) 326, a Division Bench of this Court has held that

failure to take notice of the pendency of the bail application on the part of the detaining authority while passing the impugned order of detention

amounts to non-application of mind, as the detaining authority was of the opinion that the detenu had not filed any bail application.

However, there is a minor difference that in the case cited above, the detaining authority had stated that the detenu did not file any bail application,

while the fact remains that the detenue had filed a bail application. But, in this case, the bail application was already filed and got dismissed, which

was not mentioned in the grounds of detention. Excepting this minor difference, all the other propositions held in the case cited above squarely

applies to the case in hand, and therefore, it is also a case that has to be held bad for non-application of mind on the part of the detaining authority

leading to the order of detention becoming vitiated and hence the following order :

In result,

(i) the above Habeas Corpus Petition is allowed;

(ii) the detention order in Cr.M.P. No 8 of 2004 dated 14.2.2004 passed by the first respondent herein is quashed;

(iii) the detenue is directed to be set at liberty forthwith unless her detention is required in any other case.