
(2007) 03 MAD CK 0046

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 92 of 2007

S. Natarajan

APPELLANT

Vs

State of Tamil Nadu
and Secretary to
Government of India,
Ministry of Home Affairs
(Department of Internal
Security)

RESPONDENT

Date of Decision: March 22, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120, 224, 307, 332, 353

Citation: (2007) 03 MAD CK 0046

Hon'ble Judges: P.R. Shivakumar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: R. Alagumani, for the Appellant; Daniel Manoharan, Additional Public Prosecutor for RR1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

Challenging an order of the second respondent passed on 21.9.2006, detaining the petitioner herein under the National Security Act, 1980, the detenu himself has brought forth this petition.

2. The order under challenge is perused. The affidavit in support of the petition and the counter affidavit by the second respondent are perused. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor.

3. On the recommendation made by the sponsoring authority stating that the detenu was involved in a grave crime registered by Keeranur Police Station in Crime No. 215/2006 under Sections 353, 332, 224, 307 and 120(b) of I.P.C. alleging that the detenu along with others travelled in a bus, in which the accused in some other case were taken by the escort after they were produced before the Court, and at that time, the detenu and others released those accused from the escort's custody and created panic among the public, the detaining authority arrived at a subjective satisfaction and thought it fit to detain him under the National Security Act. Accordingly, the detention has been passed, which is now being challenged by the detenu himself.

4. The order is challenged only on the ground that when the order came to be passed, no bail application was filed; that while the order was passed by the detaining authority on the recommendation made by the sponsoring authority, he has stated that he is well aware that no bail application was filed, and even then, he found that there is imminent possibility of the detenu coming out on bail.

5. The learned Counsel for the petitioner would further submit that when no bail application was filed, no question of the detaining authority coming to the conclusion or arriving at a subjective satisfaction would arise, and hence, it has got to be set aside.

6. In support of his contention, the learned Counsel relied on the following decisions reported in (1) (2004) MLJ (CRL.) 767 (C. Padmavathy v. State of Tamil Nadu and Anr.); (2) [Rathinammal Vs. The State of Tamilnadu](#), and (3) 2006 1 L.W. (Crl.) 24 (Vazhivittan v. The State of Tamil Nadu and Anr.).

7. After looking into the materials available and in particular, the impugned order, this Court is able to see that the detaining authority has stated that he was aware that no bail application was filed by the detenu, and even then, he has recorded that there is real possibility of the detenu coming out on bail. This mere statement that the possibility of the detenu's release in case he moves a bail application, in the opinion of this Court, would not satisfy the mandatory requirement. In the instant case, following the decisions referred to above, this Court without any hesitation, has to set aside the order.

8. In the result, this habeas corpus petition is allowed, setting aside the order of the second respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in any other case.