

SUPREME COURT OF INDIA

State of T.N.

Vs.

Kadal Kani

CrI.A.No.1047 of 2000

(M. B. Shah and S. N. Variava, JJ.)

01.12.2000

ORDER

1. Leave granted.

2. Heard the learned Counsel for the parties.

3. The High Court by the impugned judgment and order dated 7-4-2000 has quashed the detention order dated 16-10-1999 on the ground that there is non-application of mind on the part of the detaining authority and has mechanically signed the same because it is stated in the detention order that it be served through the Superintendent, Central Prison, Thiruchirapalli which would mean that the detaining authority was not aware of the fact that the detenu was released on bail.

4. The learned Counsel for the appellants submitted that there is total non-application of mind by the High Court to the detention order. Detention order specifically mentions in the ground No. 6 that he

was aware that detenu has been released on conditional bail by order dated 17-9-1999 in Cr.M.P. No. 2138 of 1999 by the Judicial Magistrate-II, Mayiladuthurai. In this set of circumstances, it cannot be said that there is non-application of mind by the detaining authority merely by mentioning that detention order be served through Superintendent, Central Prison, Thiruchairapalli.

5. In our view, it appears that the learned Judge has lightly interfered with the detention order without reading ground No. 6 which specifically recites that detenu was released on bail by order dated 17th September 1999. Further the detention order is addressed to the detenu mentioning his residential address. Therefore, there was no question of serving the detention order through Superintendent, Central Prison. By sending copy to the Superintendent, Central prison would not make the detention order illegal. Hence, the impugned order passed by the High Court requires to be quashed and set aside and is accordingly, set aside.

6.

Learned counsel for the appellant submitted that the detenu should be ordered to surrender to undergo the remaining period of detention. For this purpose, he placed reliance on the directions issued by this Court in Sunil Fulchand Shah v. Union of India and others [(2000) 3 SCC 409] which is reproduced hereunder:- AIR 2000 SC 1023: 2000 AIR SCW 582 : 2000 Cri LJ 1414

para 19

"6. The quashing of an order of detention by the High Court brings to an end such an order and if an appeal is allowed against the order of the High Court, the question whether or not the detenu should be made to surrender to undergo the remaining period of detention, would depend upon a variety of factors and in particular on the question of lapse of time between the date of detention, the order of the High Court and the order of this Court, setting aside the order of the High Court.

A detenu need not be sent back to undergo the remaining period of detention, after a long lapse of time, when even the maximum prescribed period intended in the order of detention has expired, unless there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the appellate order and the State is able to satisfy the Court about the desirability of "further" or "continued" detention."

7. Applying the aforesaid ratio, in our view, this is not a fit case for directing the detenu to surrender to undergo the remaining period of detention. Detention order was passed on 6th October, 1999 and hence, detention period is over.

8. In the result, the appeal is allowed to the aforesaid extent.

Order accordingly.