

**SUPREME COURT OF INDIA**

Rekha

Vs.

State of T.Nadu Tr.Sec.to Govt.

SLP(Crl.)No.576 of 2011

(Markandey Katju and Gyan Sudha Misra, JJ.,)

15.03.2011

**ORDER**

1. Heard learned counsel for the appearing parties. Leave granted.
2. These Appeals have been filed against the impugned common judgment of the High Court of Madras dated 23.12.2010.
3. The facts have been stated in the impugned judgment and hence we are not repeating the same here.
4. Mr. K.K. Mani, learned counsel appearing for some of the appellants in these Appeals, submitted that since no bail application was pending when the detention order in question under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bottleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, and Slum Grabbers and Video Pirates Act, 1982 was passed, hence the detention order in question was illegal as the appellant was already in jail in a criminal case on the same facts. Hence, there was no likelihood of his release.
5. It appears that there is some conflict of opinion on the aforesaid point. Mr. K.K. Mani, learned counsel, has relied on judgments of this Court in *T.V. Sravanan alias S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Anr<sup>1</sup>.*, *A. Shanthi (Smt.) Vs. Govt. of T.N. and Ors<sup>2</sup>.*, and *Rajesh Gulati Vs. Govt. of NCT of Delhi and Anr<sup>3</sup>.* wherein it was held that if no bail application was pending and the detenu was already, in fact, in jail in a criminal case, the detention order under the preventive detention is illegal.
6. On the other hand, Mr. Altaf Ahmed, learned senior counsel appearing for the State of Tamil Nadu, has relied on the judgments of this Court in *A. Geetha Vs. State of T.N. And Anr<sup>4</sup>.* and *Ibrahim Nazeer Vs. State of T.N. and Anr<sup>5</sup>.*, wherein it has been held that even if no bail application is pending but if in similar cases bail has been granted, then this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order.

7. Mr. K.K. Mani, learned counsel, has, however, submitted that in the decisions cited by him it was mentioned in the detention order that in similar cases bail had been granted. Despite this the detention order has been held to be illegal.

8. There seems to be conflict between the decisions cited by Mr. K.K. Mani, learned counsel, and the decisions cited by Mr. Altaf Ahmed, learned senior counsel. Hence, in our opinion, the matter should be considered by a larger bench for resolving this difference of opinion.

9. Let the papers of these Appeals be placed before Hon'ble the Chief Justice of India for constituting a larger bench. Since the period of detention is expiring on 17.04.2011, we would request Hon'ble the Chief Justice of India to constitute a larger bench at the earliest otherwise these Appeals would become infructuous.

10. Any prayer for temporary relief may be made before the larger bench.

<sup>1</sup>(2006) 2 SCC 0664

<sup>2</sup>(2006) 9 SCC 0711

<sup>3</sup>(2002) 7 SCC 0129

<sup>4</sup>(2006) 7 SCC 0603

<sup>5</sup>(2006) 6 SCC 0064