CASE NO.:
Appeal (crl.) 745 of 2002

PETITIONER:
K.VARADHARAJ

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ANR.

DATE OF JUDGMENT: 19/08/2002

BENCH:
N.Santosh Hegde & Bisheshwar Prasad Singh

JUDGMENT:

SANTOSH HEGDE,J.

This appeal involves a very short question for our consideration. The question is: when a person is detained under a Detention Act, is it necessary for the detaining authority to take into consideration any bail application filed by the detenu and any order passed by a criminal court on the said application as a matter of rule , if it is to be held that such placement of the bail application and the order passed thereon is not mandatory in every case then in the facts and circumstances of this case whether such application and orders made thereon ought to have been placed before the detaining authority ?

The appellant was detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982). Before his detention order was made on 8.11.2001, the appellant was arrested for indulging in the trade of bootlegging. Pursuant to the said arrest the appellant had made an application for grant of bail before the Court of Principal District & Sessions Judge, Dharmapuri. In the said application the Court of Principal District & Sessions Judge, Dharmapuri, as per its order dated 19.10.2001 granted bail to the appellant and directed him to be released on bail on his executing a bond of Rs.5,000/- with 2 sureties for the like sums, each to the satisfaction of the Judicial Magistrate, Krishnagiri. What is important to be noticed here is that the bail was granted because the Public Prosecutor had no objection. It is so recorded in the order granting bail. However, it is seen from records that the appellant was not able to furnish security as directed in the order granting bail, hence continued to be in custody. The order of detention under the Tamil Nadu Act 14 of 1982 was made on 8.11.2001. It is an admitted fact that while making this order the detaining authority did not have before it the application for grant of bail nor the order passed by the learned Sessions Judge granting bail but the detaining authority took into consideration a remand order made by the court to note the fact that the appellant is in Police custody.

The appellant challenged this detention order, inter alia, on the ground that the subjective satisfaction of the detaining authority is vitiated by the fact of relevant documents which

ought to have been considered by the detaining authority before coming to the conclusion that the appellant should be detained, namely, his application for bail as well as the order of the Sessions Court made thereon were not placed before the detaining authority. The said contention along with other contentions of the appellant came to be rejected by the High Court holding that since the detaining authority had noticed the fact that the detenu did not come out on bail and that he remained to be a remand prisoner till the date of the detention order, hence, non-placement of the bail application or the order made thereon were not relevant material to be considered by the detaining authority.

In this appeal it is contended that by virtue of the judgment of this Court in M. Ahamedkutty v. Union of India & Anr. (1990 2 SCC 1), it was mandatory for the detaining authority to have considered the contents of his application for bail and the order made thereon and the same having not been done the order of detention is vitiated. As a matter of fact, this is the only ground which is urged in this appeal. On behalf of the State, this argument is countered by stating that once the authority has taken note of the fact that the detenu is in custody by virtue of a remand order, the fact that he had made an application for grant of bail or the said bail was either granted or refused, becomes irrelevant, therefore, there is no need for placement of these documents for consideration of the detaining authority and non-placement of such documents would not vitiate the subjective satisfaction of the detaining authority. Learned counsel for the State relied on a judgment of this Court in Abdul Sathar Ibrahim Manik etc. v. Union of India & Ors. (1992 1 SCC 1).

We have considered the argument advanced on behalf of the parties as also perused the records. The issue that arises for our consideration in this case is not really res integra. In the case of Ahamedkutty (supra), this Court held : "Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, x x x." It is based on this observation of the court that learned counsel for the appellant argued that non-consideration of the bail application and order made thereon would vitiate the order of detention. But we should notice that the said observation of this Court was made on facts of that case, therefore, we cannot read into that observation of this Court that in every case where there is an application for bail and an order made thereon, the detaining authority must as a rule be made aware of the said application and order made thereon. In our opinion the need of placing such application and order before the detaining authority would arise on the contents of those documents. If the documents do contain some material which on facts of that case would have some bearing on the subjective satisfaction of the detaining authority then like any other vital material even this document may have to be placed before the detaining authority. In our opinion, the judgment of this Court in Ahamedkutty (supra) does not lay down a mandatory principle in law that in every case the application for bail and the order made thereon should be placed before the court. We are supported in this view of ours by the judgment relied on by the State in Abdul Sathar (supra). In the said case considering the earlier judgment in Ahamedkutty (supra) and explaining the observation quoted by us in the said judgment of Ahamedkutty (supra) this Court held :

"We are satisfied that the above observations made by the Division Bench of this Court do not lay down such legal

principle in general and a careful examination of the entire discussion would go to show that these observations were made while rejecting the contention that the bail application and the order granting bail though referred to in the grounds were not relied upon and therefore need not be supplied. The case is distinguishable for the reason that the Division Bench has particularly taken care to mention that "Considering the facts x x x x x the bail application and the bail order were vital materials." In that view these observations were made. Further that was a case where the detenu was released on bail and was not in custody. This was a vital circumstance which the authority had to consider and rely upon before passing the detention order and therefore they had to be supplied."
From the above observations, it is clear that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case. We are in respectful agreement with the view expressed by the abovesaid two judgments which in our opinion are not conflicting.
We will now consider the question whether in the instant case the facts required the detaining authority to be aware of the contents of the bail application as also the order of the court thereon. From the facts of this case, we must note that the fact that the detenu was in custody was taken note of by the detaining authority by reference to his remand order therefore that is a vital fact which is taken note of by the court. The contents of the bail application also in our opinion do not contain any vital material notice of which the detaining authority had to take. However in our opinion there was a vital fact in the order of the court notice of which ought to have been taken by the detaining authority. The said fact is that the court specifically noted in the bail order that the Public Prosecutor had no objection for grant of bail therefore the court was inclined to grant bail to the appellant. This is a circumstance, in our opinion, which ought to have been noticed by the detaining authority because the counsel representing the State in express terms said that he, which would also mean his client which is the State, did not have any objection to the grant of bail. Therefore in our opinion this is a vital fact notice of which the detaining authority ought to have taken. We do not say that merely because a concession was made by a counsel for the State in a bail application that would be binding on the detaining authority but it is necessary that such opinion expressed by a counsel for the State ought to have been taken note of and since this is a vital fact, non-consideration of this fact in our opinion vitiates the order of detention.

We are of the opinion that the reasoning of the High Court in rejecting the contention of the appellant in regard to the above is not correct, therefore, we are of the opinion that the appeal deserves to be allowed and the detention order impugned is liable to be quashed.

For the reasons stated above this appeal stands allowed and the order of detention is quashed.