
(2013) 03 MAD CK 0142
In the Madras High Court
Case No : H.C.P. No. 33 of 2013

Adv. M. Duraiselvan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 27-03-2013

Acts Referred:

Criminal Law (amendment) Act, 2013 — Section 7(1)(a)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 143, 153(A)

Citation : (2013) 2 MLJ(Cri) 545

Hon'ble Judges : M.M. Sundresh, J; M. Jaichandren, J

Bench : Division Bench

Advocate : R. Krishnamurthy, for the Appellant; K.P. Ananthakrishna, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—This Habeas Corpus Petition has been filed to call for the records relating to the order of the second respondent, dated

9.12.2012, made in proceedings No. Cr. M.P. No. 2/NSA/2012, and quash the same, and to produce the detenu, namely, S. Shanmugaiah

Pandian, son of Shanmuga Thevar, aged about 38 years, confined in the Central Prison, Trichy, before this Court and to set him at liberty. The

petitioner is the friend of the detenu, S. Shanmugaiah Pandian, son of Shanmuga Thevar, who has been detained, u/s 3(2) of the National Security

Act, 1980 (Central Act 65 of 1980), pursuant to the order passed by the second respondent, in his proceedings No. Cr. M.P. No. 2/NSA/2012,

dated 9.12.2012. In view of the detention order passed by the second respondent, dated 9.12.2012, the detenu had been lodged in the Central

Prison, Trichy.

2. Even though various grounds had been raised in the Habeas Corpus Petition filed by the petitioner, the learned counsel appearing on behalf of

the petitioner had placed emphasis on the grounds mentioned hereunder, while stating that the impugned detention order passed by the Detaining

Authority is bad in the eye of law. He had submitted that there was clear non-application of mind, on the part of the Detaining Authority, while

passing the detention order against the detenu.

3. The learned counsel appearing on behalf of the petitioner had referred to Paragraph-3 of the grounds of detention, which reads as follows:

3. I am aware that Thiru. Shanmugaiah Pandian is in Judicial Custody in Central Prison, Trichy in connection with a case which was registered in

Kadaladi P.S. Cr. No. 175/12, u/s 143, 153(A) IPC read with 7(1)(a) CLA Act. Accused Thiru. Shanmugaiah Pandian was produced before the

Judicial Magistrate, Mudukulathur and remanded upto 3.12.2012. The accused has filed a bail application in the Court of Judicial Magistrate,

Mudukulathur in connection with the above case and it was dismissed by the same Court. Again the accused has filed another Bail petition in the

District Sessions Court, Ramanathapuram vide Cr. M.P. No. 3179 of 2012 on 23.11.2012 and the same was dismissed by the above Court on

26.11.2012. If he comes out on bail, he will indulge in further such illegal activities, which will be a prejudicial to the security of State and

prejudicial to the maintenance of public order. Further, the recourse to normal criminal law would not have the desired impact or preventing him

from indulging in activities prejudicial to the security of State and prejudicial to the maintenance of public order. Therefore, I am of the view that

there is a compelling necessity to detain him u/s 3(2) of the National Security Act, 1980 (Central Act 65 of 1980) with a view to prevent him from

acting in any manner prejudicial to the security of State and prejudicial to the maintenance of public order. I am satisfied that the activities of

accused Thiru Shanmugaiah Pandian warrant his detention under the National Security Act 1980 (Central Act 65 of 1980). The documents placed

before me were relied upon while passing the detention order.

4. In paragraph 3 of the grounds of detention, it had been stated that the accused had filed a bail application in the Court of Judicial Magistrate,

Mudukulathur, in connection with the case registered in Kadaladi P.S., in Crime

No. 175/12 and that it had been dismissed by the said Court. The accused had filed another bail application in the District Sessions Court, Ramanathapuram, in Cr. M.P. No. 3179 of 2012, on 23.11.2012, and the said petition had also been dismissed by the said Court, on 26.11.2012.

5. It had been further stated that the detenu would come out on bail and he would indulge in such illegal activities, which would be a prejudicial to the security of State and prejudicial to the maintenance of public order. Therefore, the Detaining Authority was of the view that there was a compelling necessity to detain him, u/s 3(2) of the National Security Act, 1980 (Central Act 65 of 1980), with a view to prevent him from acting in any manner prejudicial of the security of the State and prejudicial to the maintenance of public order. However, no proper reason had been given by the Detaining Authority to substantiate his belief that the detenu would come out on bail. No materials were available before the Detenu Authority for arriving at such a conclusion.

6. It had also been noted that the accused had been arrested, on 9.12.2012, and he had been remanded to judicial custody and lodged in the Central Prison, Trichy. Even though he had filed a bail application in the District Sessions Court, Ramanathapuram, vide Cr. M.P. No. 3179 of 2012, on 23.11.2012, it had been dismissed by the said Court. Even though certain documents had been enclosed in the booklet filed before this Court on behalf of the respondents, relating to crime No. 1052/2012, on the file of Anna Nagar E3, Police Station, Madurai, such records have not been referred to by the detaining authority in the impugned detention order. Thus, it is noted that there has been no proper application of mind by the detaining authority, while passing the impugned order of the detention, dated 9.12.2012.

7. Even though, in paragraph 3 of the grounds of the detention, the detaining authority had stated that there is a compelling necessity to detain the detenu, under Sections 3(2) of the National Security Act, 1980, (Central Act 65 of 1980), with a view to prevent him from acting in any manner prejudicial to the security of State and prejudicial to the maintenance of public order, the detaining authority had not shown sufficient reasons to come to the conclusion that the detenu would come out on bail in the ground case, registered in Kadaladi Police Station, in Crime No. 175/2012

and in the adverse case, in crime No. 1052 of 2012, registered in Anna Nagar E3, police station, Madurai.

8. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the detention order had been passed by the detaining

authority after arriving at his subjective satisfaction, based on the cogent materials available before him. He had further submitted that the order of

detention passed by the detaining authority does not suffer from non-application of mind by the said authority.

9. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of

the records available, it is noted that the Detaining Authority had passed the impugned detention order, dated 9.12.2012, stating that the accused

had filed a bail application in the Court of Judicial Magistrate, Mudukulathur, in connection with the case registered in Kadaladi P.S. Crime No.

175/12 and that it had been dismissed by the said Court. The accused had filed another bail application in the District Sessions Court,

Ramanathapuram, in Cr. M.P. No. 3179 of 2012, on 23.11.2012, and the said petition had also been dismissed by the said Court, on

26.11.2012 and therefore, there is likelihood of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public

order. However, the learned counsel appearing on behalf of the second respondent Detaining Authority had not placed before this Court the

relevant records to refute the claims made by the learned counsel appearing on behalf of the petitioner.

10. As such, the detaining authority had not shown sufficient reasons to come to the conclusion that the detenu would come out on bail in the

ground case registered in Kadaladi Police Station Crime No. 175 of 2012 and in the adverse case in crime No. 1052 of 2012, registered in Anna

Nagar E3, police station, Madurai.

11. Even though certain documents had been enclosed in the booklet filed before this Court on behalf of the respondents, relating to crime No.

1052 of 2012, Anna Nagar E3, Police Station, Madurai, such records have not been referred to, by the detaining authority in the impugned

detention order.

12. Thus, it is noted that there has been no proper application of mind by the

detaining authority, while passing the impugned order of the detention, dated 9.12.2012. Hence, this Court finds it appropriate to quash the impugned detention order, dated 9.12.2012. Accordingly, the impugned detention order passed by the second respondent is quashed, and the Habeas Corpus petition stands allowed. The detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause.