
(2010) 08 MAD CK 0375
In the Madras High Court
Case No : H.C.P. No. 721 of 2010

Aruldoss @ Bonda

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324, 336, 341

Citation : (2010) 08 MAD CK 0375

Hon'ble Judges : M. Sathyanarayanan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : T. Muruganantham, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition is brought forth by the detenu himself challenging the order of the second respondent in Memo No. 498/B.D.F.G.I.S.S.V./2009 dated 3.12.2009, whereby he was ordered to be detained as a Goonda under the provisions of the Act 14 of 1982.

2. The Court heard the learned Counsel appearing for the petitioner and looked into the materials available on record, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendation made by the Sponsoring Authority that the detenu is involved in one adverse case viz. J-9 Thuraipakkam Police Station Crime No. 966 of 2009 for the offence u/s 302 of the Indian Penal Code and one ground case in Crime No. 970 of 2009 registered by J-9 Thuraipakkam police station for the offences under Sections 341, 323, 324, 392 read with 397, 336, 427 and 506(2) of the Indian Penal Code for the incident that had taken place on 3.11.2009 and the detenu was arrested on the same day, the Detaining Authority, on scrutiny of materials placed, passed the detention order, after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, which is the

subject matter of challenge before this Court.

4. The only ground urged by the learned Counsel for the petitioner is that actually the petitioner did not file any bail application before any Criminal Court either in adverse cases or the ground case. But the Detaining Authority has stated in the detention order that there was a real possibility of detenu coming out on bail. Learned Counsel further added that the adverse case was registered for the offence u/s 302 of the Indian Penal Code while the ground case was registered for the offences under Sections 392 read with 397 of the Indian Penal Code, in which case ordinarily the Court would not grant bail unless and until investigation is over. Hence, no material whatsoever is placed that there was a real possibility of the detenu coming out on bail. Hence the observation made by the Detaining Authority is without any material much less cogent material.

5. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

6. It is an admitted position that pursuant to the recommendation made by the Sponsoring authority that the detenu is involved in one adverse case and one ground case referred to above, the Detaining Authority has passed the detention order after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

7. This Court agrees with the contention raised by the learned Counsel appearing for the petitioner, since the Authority, before recording subjective satisfaction, should have got sufficient material to record so. Though the Authority has stated that there was a real possibility of the detenu coming out on bail, there was no material available. Apart from this, as could be seen from the records, while the ground case was registered for the offence u/s 302 of the Indian Penal Code while the ground case was registered for the offences u/s 392 read with 397 of the Indian Penal Code. In such circumstances, ordinarily criminal jurisdiction would not grant bail unless and until the investigation was reported over and therefore, in the instant case, no material much less cogent material as required under law is available before the Detaining Authority to pass such an order, which would quite indicative of the fact of non-application of mind on the part of the Detaining Authority before recording subjective satisfaction. This is the only ground raised by the learned Counsel for the petitioner to set aside the detention order. This Court is of the considered opinion that this ground is sufficient to set aside the detention order.

8. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in Memo No. 498/B.D.F.G.I.S.S.V./2010 dated 3.12.2009. The detenu, namely, Aruldoss @ Bonda, who is now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.