
(2010) 11 MAD CK 0190
In the Madras High Court
Case No : H.C.P. No. 1814 of 2010

Attai Senthil @ Senthilkumar

APPELLANT

Vs

The Secretary to Government, Home, Prohibition and Excise
Department and The Commissioner of Police

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 294, 302, 324, 379, 387

Citation : (2010) 11 MAD CK 0190

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

**Advocate : N. Sivabharathi, for the Appellant; M. Babu Muthu Meeran,
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 CMP12/2000 TPDA 3376/2010 dated 8.4.2010, 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 five adverse cases viz. (i) Crime No. 84 of 2008 registered by Pallapatty Police Station for the offences under Sections 324 and 506(ii) of the Indian Penal Code; (ii) Crime No. 1203 of 2008 registered by Pallapatty Police Station for the offence u/s 379 of the Indian Penal Code; (iii) Crime No. 1210 of 2008 registered by Pallapatty Police Station for the offence u/s 379 of the Indian Penal Code; (iv) Crime No. 1433 of 2009 registered by Pallapatty Police Station for the offences under Sections 387, 324, 294(b) and 506(ii) of the Indian Penal Code; (v) Crime No. 234 of 2010

registered by Sooramangalam Police Station for the offences under Sections 392 read with 397, 506(ii) of the Indian Penal Code and one ground case in Crime No. 351 of 2010 registered by Pallappatty police station for the offences under Sections 392 read with 397, 427, 506(ii) of the Indian Penal Code for the incident that had taken place on 17.3.2010 and the detenu was arrested on the very 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 raised by the learned Counsel for the Petitioner to set aside the detention order is that in Paragraph No. 5 of the detention order, the authority has recorded the subjective satisfaction that the detenu might indulge in such activities in future, which will be prejudicial to the maintenance of public order, but, nowhere the authority has stated that there is a real possibility or imminent possibility or likelihood of the detenu coming out on bail. If the detenu did not come out on bail, he would not have indulged in such activities in future. In such circumstances, the Authority has not even recorded subjective satisfaction properly on the materials much less cogent material, which would indicate the non application of mind on the part of the Detaining Authority. On this ground, the detention order has got to be set aside.

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

6. As could be seen from the available materials, the Detaining Authority has made the order of detention terming the detenu as a Goonda, on the strength of the materials placed before him pertaining to five adverse cases and one ground case as referred to above and has recorded its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

7. As could be seen above, in paragraph No. 5 of the detention order, the authority has recorded the subjective satisfaction that the detenu might indulge in further activities, which will be prejudicial to the maintenance of public order, but, nowhere the authority has stated that there is a real possibility or imminent possibility or likelihood of the detenu coming out on bail. In a given case like this, the authority must form an opinion before recording subjective satisfaction and that too, on the basis of the materials available and it becomes necessary for him to indicate, whether there is a real possibility or imminent possibility or likelihood of the detenu coming out on bail, but the authority has not stated any terms to indicate the same.

8. There was an occasion for the Full Bench of this Court to consider the same in, *Kalaiselvi, G. v. The State of Tamil Nadu* 2007(5) CTC 657, wherein, it has been held as under:

24. From the reading of the aforesaid decisions, it is clear that the conclusion of the Detaining Authority that there is imminent possibility of the detenu being

released on bail must be based on cogent materials and not on the mere ipse dixit of the Detaining Authority. As has been observed by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of offence, the stage of the investigation, the availability of statutory bail as envisaged u/s 167(2), Proviso of Code of Criminal Procedure. Even though it is not possible nor desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during pendency of the investigation when there is allegation of commission of serious offence, such as punishable u/s 302 or Section 395 IPC. On the other hand, it is also safe to conclude that in offences relating to prohibition laws or white collar offences, the Courts usually grant bail notwithstanding the fact that investigation may be still going on. Similarly, when a charge-sheet is not filed within the statutory period contemplated, notwithstanding the seriousness of the allegation, on the expiry of the period, the accused got a right to be released on bail.

25. In the present case, the conclusion of the Detaining Authority, as already been extracted. We have searched for the materials on record in support of such conclusion and we find none. There was no imminent possibility of the detenu obtaining statutory bail as hardly 60 days had elapsed from the date of the arrest and the investigating agency had more than a month for completion of the investigation. The alleged offence u/s 302, IPC cannot be characterised as an offence of routine nature which would prompt any Court to grant bail even before completion of investigation. Top of it, the Bail Application had in fact been rejected by the Sessions Judge and no other Bail Application was pending. In such a factual situation, in our considered opinion, the decision of the Supreme Court in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , is squarely applicable and it can be said that the conclusion of the Detaining Authority is mere ipse dixit and there is hardly any material in support of such conclusion. On this score also, the detention order is liable to be quashed.

9. In view of the above, this Court is of the considered opinion that it is a fit case where it could be stated that the subjective satisfaction recorded by the authority was without any sufficient or cogent material at all. Further, there is nothing in the detention order to indicate that he arrived at the subjective satisfaction before passing the detention order. On this ground, the detention order has got to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second Respondent in Memo CMP12/2000 TPDA 3376/2010 dated 8.4.2010. The detenu, namely, Attaisenthil @ Senthilkumar, who is now confined at Central Prison, Salem is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.