

(2010) 06 MAD CK 0292

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 106 of 2010

C. Sunitha

APPELLANT

Vs

The District Collector and District Magistrate, The Secretary
to the Government, State of Tamilnadu, (P and E) Wing and
The Inspector of Police

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 147, 148, 294, 307

Citation : (2010) 06 MAD CK 0292

Hon'ble Judges : M. Chockalingam, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : F. Deepak, for the Appellant; N. Senthurpandian, Assistant Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A. Arumughaswamy, J.—Challenge is made to the order of the 2nd respondent, dated 15.01.2010, whereby one Densilin, husband of the petitioner, was ordered to be detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, terming him as a "Goonda".

2. The affidavit and the materials filed in support of the petition, in particular the order under challenge, are looked into. The Court heard the learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was to be detained under Tamil Nadu Act 14 of 1982, as he was involved in nine adverse cases, as detailed below,

Sl.No. Police Station & Crime Number Provisions of law 1. Kuzhithurai P.S. Cr. No. 994/2000 u/s 379 IPC 2. Kuzhithurai P.S. Cr. No. 1a40/2000 u/s 380 IPC 3.

Karungal P.S. Cr. No. 68/2001 u/s 379 IPC 4. Colachel P.S. Cr. No. 484/2001 Under Sections 457, 380 IPC. 5. Colachel P.S. Cr. No. 324/2004 Under Sections 147, 148, 452, 323, 294(b), 506(ii), 380 IPC 6. Karungal P.S. Cr. No. 5/2005 Under Sections 341, 324, 506(ii) IPC altered into 341, 326, 506(ii) read with 34 IPC 7. Eraniel P.S. Cr. No. 515/2006 u/s 379 IPC 8. Kulasekaram P.S. Cr. No. 141/2009 Under Sections 147, 148, 452, 324, 323, 427, 294(b), 506(ii) IPC @ 120(B), 147, 148, 452, 324, 323, 427, 294(b), 506(ii) IPC 9. Karungal P.S. Cr. No. 500/2009 u/s 341, 294(b), 324, 307 IPC.

and also in the ground case in Crime No. 403/2009, registered under Sections 341, 294(b), 307, 506(ii) IPC on the file of Puthukadai Police Station for a crime that had taken place on 23.12.2009, in which he was arrested on the very day and remanded to judicial custody, on scrutiny of the materials placed before him, the detaining authority, the 1st respondent herein, after recording his subjective satisfaction that the activities of the alleged detenu were prejudicial to the maintenance of public order, branded him as a "Goonda" and ordered him to be detained under Tamil Nadu Act, 14 of 1982, which is the subject matter of challenge before the Court.

4. At the time of advancing arguments on behalf of the petitioner, the learned Counsel raised two grounds. Firstly, it is contended that the detenu has not moved any bail application in the ground cases but, the detaining authority in paragraph No. 4 of the grounds of detention has recorded his satisfaction that there was a real possibility of the detenu coming out on bail and, therefore, according to the learned Counsel, the subjective satisfaction so arrived by the detaining authority was not based on any material and on this ground the detention order is liable to be quashed. Added further the learned Counsel, there was a long unexplained delay in consideration of the representation made on behalf of the detenu, which was received by the Government on 09.02.2010, and hence on this ground also the order of detention has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor for the State on the above contentions put-forward by the counsel for the petitioner.

6. After looking into the materials available on record and considering the submissions made on either side, the Court has to necessarily agree with the learned Counsel for the petitioner and the impugned order of detention has got to be set aside on the grounds urged by him.

7. It is not in controversy that the detenu was ordered to be detained under Act 14/1982 on the recommendations made by the Sponsoring Authority that he was involved in nine adverse cases and in one ground case referred to above. It is true that ten cases were registered against the detenu, namely nine adverse cases and one ground case. A reading of paragraph 6 of the grounds of detention reads as follows:

4. I am aware that Thiru Densilin was arrested on 23.12.2009 and duly produced before the Judicial Magistrate No. I, Kuzhithurai on the same day and remanded

upto 06.10.2010 and lodged at District Jail, Nagercoil and his remanded period has been extended upto 20.01.2010. I am also aware that he is in remand in the ground case in Puthukadai P.S. Cr. No. 403.2009 and no bail application was filed on his behalf so far. But there is a real possibility of his coming out on bail by filing a bail application....

8. A reading of the above would clearly indicate that the detenu did not move any bail application in the ground case and he was in judicial custody. However, the detaining authority has stated that there was a real possibility of the detenu coming out on bail by filing application. The observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis at all. Law requires that to record such a satisfaction, there must be not only material but cogent material available. In the instant case, there was no material, much less cogent material, available for the detaining authority to record such a satisfaction when no bail application was pending before any court of criminal law. Under such circumstances, the order impugned in the present petition has got to be set aside.

9. Added circumstance is the delay that was caused in consideration of the representation. As could be seen from the chart placed before the Court by the learned Additional Public Prosecutor, the representation made on behalf of the petitioner, dated nil, was received by the Government on 09.02.2010 and though remarks were received from the detaining on 22.02.2010 and, the rejection letter came to be prepared only on 02.03.2010, after a delay of seven days. Learned Additional Public Prosecutor would point out that there were two intervening holidays, that is to say 27th and 28th February, 2010. Even after excluding the above four holidays, the work period was nearly five days and the State has no explanation to offer and the delay has caused prejudice to the interest of the detenu. In the considered opinion of the Court, both the grounds are available to the petitioner to set aside the order of detention impugned in the present petition.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. P.D. No. 01/2010, dated 15.01.2010, passed by the 1st respondent is quashed. The detenu Densilin, S/o.Dennison, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.