

(2005) 01 MAD CK 0108

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 106 of 2004

Clara

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2005) 2 CTC 48

Hon'ble Judges : S. Ashok Kumar, J;P.O. Dinakaran, J

Bench : Division Bench

Advocate : G.R. Edmund, for the Appellant; K. Chellapandian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—The challenge in this habeas corpus petition is to the order of detention, dated 31.8.2004, passed by the second respondent against one Amali (hereinafter referred as "the detenu"), branding him as a "Goonda" and directing preventive detention u/s 3(1) of 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). The petitioner is the wife of the detenu.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. The learned counsel appearing for the petitioner would contend that the impugned order of detention is liable to be quashed on the following two grounds:

(i) When the crime referred to in the adverse case is more grave in nature, there is no imminent possibility of the detenu being released on bail, as opined by the detaining authority, and, therefore, the order of detention based on such opinion, is vitiated for non application of mind and in support of this contention, he relied

on the decision of a Division Bench of this Court in *Ameer v. The State of Tamil Nadu and Anr.*, 2004 (2) L.W. (Crl.) 681.

(ii) There is unexplained delay in disposing of the representation of the detenu and on this ground also the impugned detention order is liable to be quashed.

4. We have also heard the learned Additional Public Prosecutor on the above aspects and perused the materials placed before us.

5. It is seen that the order of detention came to be passed by the second respondent based on three adverse cases in Crime No. 4 of 2004, registered on 6.1.2004, for the offences punishable under Sections 147, 148, 448, 427, 435, 109 read with Section 34, I.P.C., in Crime No. 267 of 2004, registered on 4.7.2004, for the offences under Sections 147, 148, 427 and 506(ii) I.P.C. and in Crime No. 305 of 2004, registered on 9.8.2004, for the offences punishable under Sections 147, 148, 341, 307 and 302, I.P.C. The ground case is in Crime No. 307 of 2004, registered on 10.8.2004, for the offences punishable under Sections 147, 148, 427, 307 and 506(ii), I.P.C. and u/s 3(a) of Explosive Substances Act.

6. The detaining authority, after taking into consideration the adverse cases and particularly the ground case in Crime No. 307 of 2004, wherein the major offence alleged is only u/s 307, I.P.C., was of the opinion that there is a possibility that the detenu could be released on bail as he has moved bail application in the ground case before the Principal Sessions Judge, Thoothukudi in Cr.M.P.No. 1502 of 2004 which was posted for hearing on 01.09.2004. It is admitted that the detenu has not moved any bail application in the adverse case where the offence alleged to have been committed by the detenu is more grave in nature, namely, u/s 302, I.P.C. and in such circumstances, there is no imminent possibility of the detenu being released on bail, as opined by the detaining authority.

7. In the decision relied on by the learned counsel for the petitioner, this Court, while following the earlier Division Bench decisions in *Dharmar v. State of Tamil Nadu and Anr.*, 1995 (1) L.W. (Crl.) 333 and in *Kanniappan v. The District Magistrate and Anr.*, 2000 (1) L.W. (Crl.) 196, quashed the order of detention holding that when the crime referred to in the adverse case is more grave in nature, there is no imminent possibility of the accused being released on bail and therefore the order of detention based on such opinion is vitiated on the ground of non-application of mind. The principle laid down in the above decisions and its applicability to the instant case is not by the learned Additional Public Prosecutor.

8. Next coming to the contention of delay in disposing of the representation of the detenu, the representation submitted by the detenu, dated "Nil", was received by the Government on 13.9.2004 (Saturday) and remarks were called on the next day, i.e. 14.9.2004 (Sunday). But, the remarks were received by the Government from the detaining authority only on 23.9.2004, after a delay of eight days, for which there is no explanation in the counter filed by the detaining authority, except furnishing the dates. It is for the detaining authority or the

Government to furnish explanation for any delay at the time of disposal of the representation of the detenu. In our opinion, on this ground of unexplained delay in disposing of the representation of the detenu also the order of detention is vitiated.

7. For the reasons stated above, this habeas corpus petition is allowed and the impugned order of detention, dated 31.8.2004, made H.S. (M)No. Confdl.No. 22/2004, by the second respondent, is quashed. The detenu is directed to be set at liberty forthwith, unless his presence is required in connection with in any other case.