
(1995) 02 MAD CK 0020
In the Madras High Court
Case No : H.C.P. No. 1100 of 1994

Dharmar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 326, 452

Citation : (1995) 1 LW(Cri) 333

Hon'ble Judges : Thangamani, J;Janarthanam, J

Bench : Division Bench

Advocate : R. Shanmughasundaram, for the Appellant; R. Regupathi, Additional Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.—One Dharmar (Petitioner) is the detenu. He is stated to have been involved, apart from the ground case, in two other

adverse cases, covered by Serial Nos. 1 and 2 of paragraph 1 of grounds of detention.

(a)(i) The first adverse case covered by Serial No. 1 is relatable to a transaction which happened on 6.10.93 at 22.00 hours at Madhavan Nair

Colony, Therespuram, Tuticorin. In the said transaction, the detenu and three others were stated to have criminally trespassed into the house of

one Perumal and assaulted him and another by name Palavesam with deadly weapons and caused grievous injuries to them.

(ii) On the complaint of the said Palavesam, injured, a case in Crime No. 1023/93 of Tuticorin North Police Station had been registered for the

alleged offences under Sections 323, 324, 326 and 452 I.P.C.

(iii) The detenu was stated to have been arrested on 14.10.93 and was sent for remand. He was however released on bail by Judicial Magistrate

No. II, Tuticorin on 18.10.93. The final report appeared to have been filed in the said case, which had been taken into file of Judicial Magistrate

No. II, Tuticorin as C.C. 136/94.

(b)(i) Adverse case No. 2 covered by Serial No. 2 is relatable to a transaction which happened on 10.5.94 at about 23:15 hours at Davisapuram

Road, North Pillayar Koil Street Junction, while one Samuel and Rooban were riding in their bicycle towards north, the detenu and four others,

armed with swords, forming themselves into an unlawful assembly, wrongfully restrained Samuel and murdered him by infliction of multiple injuries

on his person, besides causing grievous injuries to one Rooban, who tried to save the said Samuel.(ii) They also chased one Murugesan by

brandishing their weapons, who was rushing to the rescue of Samuel and Rooban.

(iii) On the complaint of Murugesan, a case was registered in Crime No. 485/94 on the file of Tuticorin North Police Station of the alleged

offences under Sections 147, 148, 341, 314, 506(2) and 302, I.P.C.

2. (a) The ground case incident took place the next day viz., 11.5.94 at 10:00 A.M. near Urundayankoil at Muthukrishnapuram, Tuticorin. The

occurrence in the ground case on the complaint of one Rajan, had been registered as a case in Crime No. 486/94 on the file of Tuticorin North

Police Station for the alleged offences under Sections 341, 342, 427 and 506(2), I.P.C. The Inspector of Police, Tuticorin North Police Station

took up further investigation of the case.

(b) The detenu had been arrested on 11.5.94 at about 5:00 P.M. and he had been produced before Judicial Magistrate No. II, Tuticorin on

12.5.94 praying for remand by way of two separate requisitions not only for the occurrence relatable to adverse case No. 2 but also to the

occurrence relatable to the ground case. Learned Judicial Magistrate No .II, Tuticorin also passed orders, remanding the detenu for a period of 15

days till upto 26.5.94 in both those cases. Separate requisitions for extension of remand had been filed before the said Magistrate on 26.5.94 and

the said learned Magistrate passed orders, granting extension of remand in those requisitions till upto 9.6.94.

(c) Follow up action had been taken by the Sponsoring Authority in order to detain the detenu under Act 14 of 1982.

3. The District Magistrate and Collector, Chidambaranar District, Tuticorin, second

Respondent on perusal of the materials placed before him and deriving subjective satisfaction as to the impelling need a necessity to detain him under Act 14 of 1982, in exercise of the powers conferred by Sub-section (1) of Section 3 of Tamil Nadu Act 14 of 1982, clamped upon him the impugned order of detention in his proceedings H.S.(M) Confidential No. 33/94, dated 31.5.94 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and health, branding him as Goonda.

4. Mr. R. Shanmugasundaram, learned Counsel appearing for the Petitioner would press into service the lone and sole ground viz. that there was utter non-application of mind on the part of the second Respondent Detaining Authority as respects the imminent possibility of the detenu coming out on bail and further indulge in activities which would be prejudicial to the maintenance of public order which is getting reflected in paragraph 5 of the grounds of detention and on this short ground alone he would say that the impugned order of detention is liable to be set aside.

5. Mr. R. Regupathi, learned Additional Public Prosecutor, representing the Respondents, would however repel such submission and produce the relevant title for personal consideration of this Court.

6. The narration of the events that took place on 10.5.94 and 11.5.94 is so eloquent to speak for themselves and no further elucidation is necessary. Though the incident or occurrence in the adverse case No. 2 happened on 10.5.94, resulting in the murder of one Samuel, besides causing grievous injuries to one Rooban, yet the detenu was not at all arrested till subsequent to the occurrence in the ground case which took place as already indicated at 10:00 A.M. on 11.5.94 and his arrest had been effected only at 5:00 P.M. on the said day. Admittedly separate requisitions given by the Sponsoring Authority before the Judicial Magistrate No. II, Tuticorin for initial remand and subsequent extension of remand. Orders passed by the said Magistrate granting initial remand as well as extension of remand had all been placed before the second Respondent-Detaining Authority for perusal and consideration before ever the impugned order of detention had been passed.

7. Not only those records had been placed before the second Respondent-Detaining Authority, but the copy of those documents had been

furnished to the detenu, which are available at pages 121 to 123. 167. 225 and 229 of the booklet of documents supplied to the detenu.

Notwithstanding the fact that those documents were available for perusal and consideration the second Respondent Detaining Authority, however,

did not at all appear to have applied his mind to those documents fully and he appeared to have taken into consideration the fact of the detenu

being lodged in prison as a remand prisoner only in the ground case for less serious offences under Sections 341, 342, 323, 427 and 506(2),

I.P.C. and did not at all take into consideration the fact that the detenu had been arrested in a serious offence of murder and other offences

relatable to human body and remanded therefor and consequently lodged in prison, at the time when the impugned order of detention had been

passed. This is getting reflected in paragraph 5 of the grounds of detention, which reads as below:

I am aware that Thiru Dharmar is in remand upto 9.6.94. He had not tiled any bail application so far, and that there is imminent possibility that he

may come out on bail for the offences under Sections 341, 342, 323, 427 and 506(2), I.P.C. by tiling bail application in the court. If he comes out

on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order.....

8. It is thus clear that the second Respondent-Detaining Authority had not at all adverted to the factum of the detenu being lodged in prison as a

remand prisoner in a serious offence of murder covered by adverse case No. 2, while considering the imminent possibility of his coming out on bail

and his further indulging in prejudicial activities affecting the maintenance of public order.

9. In such state of affairs, we are of the opinion that there was utter non-application of mind on the part of the second Respondent-Detaining

Authority as respects the imminent possibility of the detenu coming out on bail and further indulging in prejudicial activities affecting the maintenance

of public order. In this view of the matter, as rightly contended by learned Counsel for the Petitioner, the impugned order of detention is liable to be

set aside and the same is accordingly set aside. The detenu is therefore ordered to be set at liberty forthwith unless and until he is required to be

detained in connection with any other case. The H.C.P. is thus allowed.