
(2009) 04 MAD CK 0148
In the Madras High Court
Case No : H.C.P. (MD) No. 631 of 2008

Habiba

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 153(A), 153(B)

Citation : (2009) 04 MAD CK 0148

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

Bench : Division Bench

Advocate : J. Gunaseelan Muthiah, for the Appellant; Daniel Manoharan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This Writ Petition challenges the order of the second respondent dated 26.7.2008 whereby the order of detention

was made against the detenu, son of the petitioner, under the provisions of the National Security Act, 1980 (Central Act 65 of 1980).

2. It is not in controversy that the detenu was involved in seven adverse cases viz., Crime No. 275/2006 under Sections 147, 148, 341, 387,

506(ii) IPC registered in Dindigul Town West Police Station; Crime No. 244/2008 under Sections 147, 148, 294(b), 506(ii) IPC registered in

Dindigul Town West Police Station; Crime No. 239 of 2008 under Sections 143, 341, 336 IPC and 3(1) TNPPDL Act 1984 registered in

Dindigul Town North Police Station; Crime No. 360/2008 under Sections 341, 323, 506(i) IPC; Crime No. 347/2008 under Sections 147, 148,

341, 324, 307, 153A, 153B IPC r/w 3(1) TNPPDL Act, 1984 registered in Dindigul Town South Police Station; Crime No. 348/2008 under

Sections 147, 148, 341, 153A, 153B IPC r/w 3(1) TNPPDL Act 1984 registered in Dindigul Town South Police Station; and Crime No.

382/2008 under Sections 147, 148, 341 IPC r/w 3(1) TNPPDL Act, 1984 registered in Dindigul Town West Police Station. Apart from the

seven adverse cases, he was also involved in one ground case, which was registered by the Dindigul Town South Police Station in Crime No.

346/2008 under Sections 147, 148, 341, 307, 153A, 153B IPC r/w 3(1) TNPPDL Act 1984.

3. The detaining authority, after looking into all the materials available recorded his subjective satisfaction that the detenu by his activities had

created communal tension between the Hindus and the Muslims and affected the public order and hence, he should be detained under the

provisions of the National Security Act.

4. The Court looked into the materials available, in particular, the order under challenge and also the Counter Affidavit filed by the State.

5. Assailing the order of detention, the learned Counsel appearing for the petitioner would submit as follows:

(i) The detenu was arrested in the ground case in Crime No. 346/2008 and produced before the Judicial Magistrate No. III, Dindigul on

19.6.2008 and was remanded till 3.7.2008 and then his remand was extended upto 17.7.2008 and finally, his remand was extended upto

31.7.2008. The order of remand extension if looked into, it would indicate that it was done by production of the detenu before the Court whereas

the order of detention would read as if it was done by video conferencing and thus, the order of detention is found contrary to the actual materials

available.

(ii) Secondly, the detenu filed a bail petition before the Court of Principal Sessions Judge, Dindigul in Cr.M.P. No. 1078/2008 and the same was

ordered. While granting bail, the Principal Sessions Judge imposed a condition that the accused/detenu should deposit a sum of Rs. 1,000/- and

also furnish two sureties each executing a bond for a sum of Rs. 10,000/-. Contrarily, it is found in the detention order that he was directed to

furnish two sureties each executing a bond for a sum of Rs. 10,000/- but insofar as cash deposit of Rs. 1,000/-, it is not found so. Thus, it is also

pointing to the non-application of mind on the part of the detaining authority.

(iii) Added further the learned Counsel for the petitioner that in respect of one adverse case and one ground case, bail was granted in his favour.

He was actually under custody in respect of three adverse cases, which were pending against the detenu. The detaining authority has stated that

there was a real possibility of the detenu coming out on bail when the detenu was in custody in respect of three adverse cases and when there was

no bail application pending before any Court of criminal law. The detaining authority without any material or basis has observed that there was a

real possibility of the detenu coming out on bail and thus, it has affected the order.

(iv) In the first adverse case i.e. in Crime No. 275/2006 registered in Dindigul Town West Police Station, charge sheet was laid but no particulars

were furnished to the detenu as to list of witnesses

(iv) On all the above grounds, the order of detention has got to be set aside, according to the learned Counsel for the petitioner.

6. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions, who made sincere attempt to

sustain the order of detention.

7. After looking into the materials, the Court is inclined to set aside the order of detention after making a comment that it was a case of carrying

non-application of mind. It is not in controversy that the detenu was involved in seven adverse cases and in one ground case in Crime No.

346/2008 registered in Dindigul Town South Police Station. It could also be seen that remand was extended from 3.7.2008 till 31.7.2008 in that

case. The order of remand extension would clearly indicate that he was produced before the Court. Contrarily, it is found in the order of detention

as if the extension of remand was extended by video conferencing. Now, it is highly doubtful whether the detenu was actually produced before the

Court as found in the remand extension or whether remand was extended by video conferencing. Thus, it only indicates the non-application of

mind on the part of the detaining authority. Even at this stage, the State is unable to explain about this.

8. Added circumstances is that when the bail was granted by the Court of Principal Sessions Judge, Dindigul in Cr.M.P.No.1078/2008, the detenu

was directed to furnish cash deposit of Rs. 1,000/- and also furnish two sureties

each executing a bond for a sum of Rs. 10,000/-. Contrarily, the order of detention indicates that the bail was granted on condition of furnishing two sureties each executing a bond for a sum of Rs. 10,000/- but it does not whisper about the condition directing him a cash deposit of Rs. 1,000/-. Thus, it would indicate that the bail order was not properly looked into by the detaining authority.

9. Added circumstances is while the detenu was under custody in respect of three adverse cases, while he was having knowledge of bail in one adverse case and in the ground case, no material was available in the hands of the detaining authority to indicate that there was a real possibility of the detenu coming out on bail.

10. All the above grounds of attack, in the considered opinion of the Court, would suffice to set aside the order of detention. Accordingly, it is made undone by upsetting the order of detention. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case in accordance with law. Accordingly, the Habeas Corpus Petition is allowed.