

(2014) 03 MAD CK 0065
In the Madras High Court
Case No : H.C.P. No. 2294 of 2013

J. Seeni Mohamed

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Arms Act, 1959 — Section 25(1)(1B) 3
Constitution of India, 1950 — Article 22(1)
Penal Code, 1860 (IPC) — Section 147 148 294(b) 34 341

Citation : (2014) CriLJ 3554

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; P. Govindarajan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Petitioner is the father of the detenu and challenge is made to the order of detention dated 23.09.2013 made in Memo No. 1098/BDFGISSV/2013, passed by the 2nd respondent under which the detenu has been branded as a Goonda" and 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, hereinafter referred to as Tamil Nadu Act 14 of 1982. As per the grounds of detention dated 23.09.2013, the detenu came to the adverse notice in the following case:--

Sl. No.

Police Station & Crime No.

Section of Law

1

341, 294(b), 384 and 506(ii) IPC

2. In para-3 of the grounds of detention, it is stated that among other things that the detenu is also involved in the commission of the offence, which took place on 11.09.2013 at 06.00 hours, which led to the registration of a case by Sub-Inspector of Police, Law and Order, D.3 Ice House Police Station, in Crime No. 1069 of 2013 for "Man Missing", subsequently altered into Sections 147, 148, 342, 364(A) and 506(ii) IPC and Section 3 r/w. 25(1)(1B) of Arms Act r/w. 34 IPC. It is further stated that the detenu was arrested on 13.09.2013 at 04.30 hours and produced before the learned 13th Metropolitan Magistrate, Egmore, Chennai, and remanded to judicial custody. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court in this habeas corpus petition.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focussed his argument that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no proof to show that the intimation of arrest was given, as the arrest was communicated through cell phone to the father of the detenu, which clearly shows non-application of mind on the part of detaining authority.

4. Per contra, Mr. P. Govindarajan, learned Additional Public Prosecutor submits that acts committed by the detenu are prejudicial to the maintenance of public order and peace and the arrest was communicated by way of cell phone to the father of the detenu, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

5. We have considered the rival submissions and perused the materials available on record.

6. A close reading of the arrest memo, which is annexed at page no. 81 of the booklet shows that the arrest of detenu was intimated to the father of detenu over phone No. 9840337757. But at the same time, it is to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to

impugn the arrest effected on him. In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through cell phone to the father of the detenu, but, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on the failure of the same, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India.

7. The Hon"ble Division Bench of this Court in the case of Shanmugam and Another Vs. State of Tamil Nadu and Another, , while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under: 19. Despite clear instructions given by the Government after touching upon the legal position, the officer, who arrested the detenus informed the said arrest to the wife and friend of detenus over cell phone , by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also is an attempt to cast aside the instructions given by the Government.

Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely Thameem Ansari, made in Memo No. 1098/BDFGISSV/2013, dated 23.09.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.