
(2011) 03 MAD CK 0529
In the Madras High Court
Case No : H.C.P. No.10 of 2011

K. Raghu @ Nagaraj

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 341, 379, 380, 392

Citation : (2011) 03 MAD CK 0529

Hon'ble Judges : P.R. Shivakumar, J;C. Nagappan, J

Bench : Division Bench

Advocate : J. Ashok, for the Appellant; A.D. Jagadish Chandira, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The detenu K. Raghu @ Nagaraj is the Petitioner in this Habeas Corpus Petition and he has challenged the order of detention passed by the second Respondent in Memo No.386/BDFGISSV/2010 dated 30.06.2010.

2. The detenu, K. Raghu @ Nagaraj came to adverse notice in three adverse cases in 1) Cr. No.709 of 2010 registered on the file of K 10 Koyambedu Police Station for an offence punishable under Sections 457 & 380 IPC, 2) Cr. No.736 of 2010 registered on the file of K 10 Koyambedu Police Station for an offence punishable u/s 379 IPC, 3) Cr. No.417 of 2010 registered on the file of V3 JJ Nagar Police Station for an offence punishable u/s 392 IPC, besides the ground case in Crime No.884 of 2010 on the file of K 10 Koyambedu Police Station for offences punishable under Sections 341, 323, 427, 397 and 506(2) IPC, to hold the detenu a "bootlegger" in accordance with the definition of the term found in Section 2 (1)(b) of Tamil Nadu Act 14 of 1982.

3. Though the order of detention is assailed on various grounds, the learned Counsel for the Petitioner very much relies on the contention that the subjective satisfaction of the Detaining Authority as to the imminent possibility of the

detenu coming out on bail is not based on cogent material and the same can be stated to be ipse dixit of the Detaining Authority.

4. We have also heard the submissions made by Mr. A.D. Jagadish Chandra, learned Additional Public Prosecutor on the above said point raised by the learned Counsel for the Petitioner.

5. It is pointed out by the learned Counsel for the Petitioner that the Detaining Authority, in the grounds of detention, after stating the awareness of the Detaining Authority regarding the remand of the Petitioner/detenu, has proceeded to state that the bail applications filed by the Petitioner in all the above said cases were dismissed and that, however the Detaining Authority has also stated that it was satisfied that the Petitioner/detenu would come out on bail by filing fresh bail applications since in similar cases bails were granted to other accused persons, accused of similar offences. Learned Counsel for the Petitioner also pointed out the recital found in paragraph 4 of the ground of detention that the Detaining Authority was also aware of the fact that the relatives of the Petitioner Raghu @ Nagaraj were taking steps to take him on bail in the first and second adverse cases and the ground case. The said observation according to the learned Counsel for the Petitioner is not based on any material.

6. In the booklet, a copy of the special report submitted by the Sponsoring Authority to the Detaining Authority is found in page 199. In the said special report, a bald statement that the arrest and remand particulars of the Petitioner/detenu were obtained from the police station, without stating the particulars of the persons and the relationship of the persons, who got the said particulars. When the special report is of such a nature, where from the Detaining Authority got the information that the relatives of the Petitioner/detenu were taking steps to file bail petitions on behalf of the Petitioner, is questionable. In addition to that, though three cases have been cited as adverse cases, the Detaining Authority had adverted to the remand of the Petitioner and the dismissal of his petitions in two of the adverse cases alone. Those two cases are only of simple offences when they are compared with the offence alleged in the third adverse case. In the third adverse case, the Petitioner is accused of committing an offence u/s 392 of IPC. The Detaining Authority has not adverted to the fact whether the Petitioner was arrested/remanded in the said case. The omission to consider the same leads to the omission to consider the possibility of the Petitioner coming out on bail in the third adverse case, as it is very much open to the police to get him remanded in the third adverse case also.

7. For the reasons stated above, this Court accepts the contention of the learned Counsel for the Petitioner that the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the Petitioner coming out on bail in the cases in which he has been arrayed as accused, is not based on cogent materials and on that score alone, the order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and the impugned order of the second Respondent in Memo No.386/BDFGISSV/2010 dated 30.06.2010 is set aside. The detenu K. Raghu @ Nagaraj, son of Karuppusamy is ordered to be set at liberty forthwith, unless his continued custody is required in connection with any other case.