

(2014) 04 MAD CK 0102
In the Madras High Court
Case No : H.C.P. No. 2390 of 2013

Kalavathy

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)

Penal Code, 1860 (IPC) — Section 147, 148, 294(b), 302, 307

Citation : (2014) 04 MAD CK 0102

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the wife of the detenu and challenge is made to the order of detention dated 17.09.2013 made in Memo No. 1025/BDFGISSV/2013 passed by the second respondent under which the detenu has been branded as a "Goonda" and detained under sub-section (1) of section 3 of 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 (Tamil Nadu Act 14 of 1982) read with the orders issued by the Government in G.O. (D) No. 120, Home, Prohibition and Excise (XVI) Department, dated 18.07.2013 under sub-section (2) of section 3 of the Tamil Nadu Act 14 of 1982.

2. The detenu came to adverse notice in the following cases:

S. No.

Police Station and Crime No.

Sections of Law

1

R-2 Kodambakkam Police Station, Crime No. 453/2008

341 and 324 IPC

2

R-2 Kodambakkam Police Station, Crime No. 1512/2013

341, 323 and 506(ii) IPC r/w. 384 IPC

3

R-2 Kodambakkam Police Station, Crime No. 1539/2013

341, 323, 336 and 506(ii) IPC r/w. 397 IPC

The ground case alleged against the detenu is one registered on 11.08.2013 by the Sub-Inspector of Police, R-2 Kodambakkam Police Station in Crime No. 1568/2013 for offences u/s 341, 326 and 307 I.P.C.

3. Though the learned counsel for the petitioner has raised several grounds, he mainly argued on the question of delay in considering the petitioner's representation. He would contend that the inordinate delay of consideration of the representation would entitle the petitioner the relief prayed for in the present petition. Therefore, the detention order is vitiated in law.

4. We have heard Mr. P. Govindarajan, learned Additional Public Prosecutor on the above point, perused the records and verified the chart produced by the respondents.

5. In the Detention Order, the Commissioner of Police, Chennai Police, Egmore, Chennai/2nd respondent herein has arrived at a suggestion as could be seen from paragraph 4, which is as follows:

4. I am aware that Thiru. Siva is in remand in R-2 Kodambakkam Police Station Crime Nos. 1512/2013, 1539/2013 and 1568/2013 and he has not moved any bail applications for the above cases so far. The sponsoring authority stated that Thiru. Siva's relatives are taking action to take him out on bail for the above cases by filing bail application before the appropriate court. In a similar case registered at V-5 Thirumangalam Police Station Crime No. 381/2009 under Sections 147, 448, 384 and 506(ii) IPC and 3(1) TNPP (D&L) Act, bail was granted by the Chief Metropolitan Magistrate Court, Egmore, in CrI. M.P. No. 1361/2009. Similarly, in a case registered at R-4 Soundarapandiyanar Angadi Police Station Cr. No. 1173/2011 under Sections 341, 294(b), 307, 392, 397, 336, 427 and 506(ii) IPC bail was granted by the Court of Principal Sessions Judge in CrI. M.P. No. 11090/2011. Similarly, in a case registered at R-7 K.K. Nagar Police Station Crime No. 301/2009 under Sections 147, 148, 341 and 302 IPC bail was granted by the Hon'ble High Court in CrI. O.P. No. 13843/2009. Hence, there is a real possibility of his coming out on bail for the above cases by filing bail application before the appropriate court, since in similarly placed cases bails are granted by courts after a lapse of time, if he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public

order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru. Siva is also a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provision of Tamil Nadu Act 14 of 1982.

6. On a perusal of the list informing the course of consideration of the petitioner's representation, it is seen that the Detention Order was passed on 17.09.2013; the detenu made a representation to the detaining authority on 07.10.2013 and it was received by the competent authority on 10.10.2013; remarks were called on 10.10.2013 and only on 28.10.2013, remarks were received and file was submitted on 29.10.2013, on which day itself, the Under Secretary and Deputy Secretary have dealt with it; the Minister (Electricity, Prohibition and Excise) dealt with the same on 31.10.2013 and rejected it on 05.11.2013, on which day itself, rejection letter was sent to the detenu.

7. Verification of the above dates and events would clearly show that there is unexplained delay of 9 days between 10.10.2013, the date on which remarks were called for and 28.10.2013, the date on which remarks were received, excluding 8 holidays i.e. on 12.10.2013, 13.10.2013, 14.10.2013, 16.10.2013, 19.10.2013, 20.10.2013, 26.10.2013 and 27.10.2013. The said delay is not explained by the competent authority. Therefore, it is apparent that there has been an inordinate and unexplained delay in consideration of the petitioner's representation and the same contradicts the requirement of Article 22(5) of the Constitution of India and the consequence thereof is in infringement of the right of Article 21 of the Constitution of India.

8. Accordingly, the impugned detention order passed by the second respondent in Memo No. 1025/BDFGISSV/2013, dated 17.09.2013 is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Siva in this case is set at liberty forthwith, unless his custody is required in connection with any other case. However, this order shall not preclude the prosecution from conducting cases effectively and shall not confer any right to the detenu before the Regular Court.