
(2010) 06 MAD CK 0039

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 49 of 2010

Kaliyammal Thevar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 380, 392, 457

Citation : (2010) 06 MAD CK 0039

Hon'ble Judges : M. Chockalingam, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—The petitioner is the mother of the detenu. She has filed this petition Challenging the order of the 2nd respondent,

dated 31.07.2009, whereby the son of the petitioner by name Karunanithi, was ordered to be 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, terming him as a ""Goonda"".

2. The affidavit and the materials filed in support of the petition, in particular the order under challenge, are looked into. The Court heard the

learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was to be detained

under Tamil Nadu Act 14 of 1982, as he was involved in five adverse cases, as detailed below,

Sl. No. Police Station & Crime Number Provisions of law

1. Aundipatti Police Station Crime No. 144/2005 u/s 379 IPC

2. Aundipatti Police Station Crime No. 02/2006 Under Sections 457, 380 IPC

3. Aundipatti Police Station Crime No. 400/2006 Under Sections 457, 380 IPC

4. G. Vilakku Police Station Crime No. 176/2006 u/s 379 IPC.

5. G. Vilakku Police Station Crime No. 177/2008 Under Sections 457, 380 IPC

and also in the ground case in Crime No. 378/2009, registered u/s 392 IPC on the file of Aundipatti Police Station for a crime that had taken place

on 06.07.2009, in which he was arrested on the very day and remanded to judicial custody, on scrutiny of the materials placed before him, the

detaining authority, the 2nd respondent herein, after recording his subjective satisfaction that the activities of the alleged detenu were prejudicial to

the maintenance of public order, branded him as a ""Goonda"" and ordered him to be detained under Tamil Nadu Act, 14 of 1982, which is the

subject matter of challenge before the Court.

4. At the time of advancing arguments on behalf of the petitioner, the main ground raised by the learned Counsel is that the detenu has not moved

any bail application in the ground case Crime No. 378 of 2009 but, the detaining authority in paragraph No. 5 of the grounds of detention has

recorded his subjective satisfaction that there was a real possibility of the detenu coming out on bail and, therefore, according to the learned

Counsel, the subjective satisfaction so arrived by the detaining authority was not based on any material at all, much less cogent material under such

circumstances it would be indicative of the fact that there was non-application of mind on the part of the detaining Authority and on this ground the

detention order is liable to be quashed.

5. The Court heard the learned Additional Public Prosecutor for the State on the above contention put-forward by the counsel for the petitioner.

6. After looking into the materials available on record and considering the submissions made on either side, the Court has to necessarily agree with

the learned Counsel for the petitioner and the impugned order of detention has got to be set aside on the main ground urged by him.

7. It is not in controversy that the detenu was ordered to be detained under Act 14/1982 on the recommendations made by the Sponsoring

Authority that he was involved in five adverse cases and in one ground case referred to above. It is true that six cases were registered against the

detenu, namely five adverse cases and one ground case. The relevant portion in paragraph No. 5 of the grounds of detention reads as follows:

5. I am aware that Thiru. Karunanithi is in remand in connection with the Aundipatti Police Station Cr. No. 378/2009 and has not moved any bail

application. I am also aware that there is a real possibility of his coming out on bail by filing bail application for the above case, since in similar

cases bails are granted by the concerned Court or Higher Courts after lapse of time....

8. From the reading of the above, it is quite clear that bail application was not moved by the detenu in the ground case Crime No. 378/2009 and

he was in judicial custody. But, the detaining authority has stated that there was a real possibility of the detenu coming out on bail by filing

application. The observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis

at all and it was only apprehension in the mind of the detaining authority. Law would require not only material but cogent material to record such a

satisfaction, which is lacking in the instant case. When no bail application was pending before any court of criminal law on the date when the

detention order came to be passed, the subjective satisfaction recorded by the detaining authority that there was a real possibility of the detenu

coming out on bail shows non-application of mind on the part of the detaining authority. Under such circumstances, the order impugned in the

present petition has got to be set aside.

9. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. 08/2009, dated 31.07.2009, passed by the 2nd

respondent is quashed. The detenu Karunanithi, S/o. Rama thevar, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.