
(2014) 07 MAD CK 0133
In the Madras High Court
Case No : H.C.P. No. 3131 of 2013

Kubesh

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 323, 336, 341, 392

Citation : (2014) 07 MAD CK 0133

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

Bench : Division Bench

Judgement

G. Chockalingam, J.—Detenu himself is the petitioner herein. The detenu has been branded as a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BDFGISSV No.1568/2013, dated 09.11.2013.

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

Sr. No.

Police Station and Crime No.

Sections of Law

1

S-9 Pazhavanthangal Police Station, Crime No. 442/2013

341, 392 and 506(ii) IPC

2

S-9 Pazhavanthangal Police Station, Crime No. 540/2013

341, 294(b), 392, 397 and 506(ii) IPC

3

S-9 Pazhavanthangal Police Station, Crime No. 785/2013

341, 294(b), 323, 427, 392 and 506(ii) IPC r/w. 397 IPC

The ground case alleged against the detenu is one registered on 15.10.2013 by the Inspector of Police, S-9 Pazhavanthangal Police Station in Crime No.820 of 2013 for the offences under Sections 341, 294(b), 336, 427, 506(ii) and 392 r/w. 397 IPC. Aggrieved by the order of detention, the present petition has been filed.

3. Though learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on the ground that there is non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the 3rd adverse case in Cr.No.785/2013 registered by S-9 Pazhavanthangal Police Station and in the ground case in Cr.No.820/2013 registered by S-9 Pazhavanthangal Police Station and the bail application filed by the detenu in the ground case before the learned Principal District and Sessions Judge, Chengalpattu, in CrI.MP.No.4186/2013 was pending and he has not moved any bail application in the 3rd adverse case. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail application in the 3rd adverse case. The learned counsel further argued that in this case, the detenu has not moved any bail application in the 3rd adverse case and the bail application filed in the ground case was pending and he is in remand in the said case. When no bail application is filed, there is no real possibility of the detenu coming out on bail and when a bail application is pending, then there is no presumption that the detenu would come out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the 3rd adverse case and there is no imminent possibility of the detenu coming out on bail in the said case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the bail application in the ground case is pending is not justifiable for the reason that he has pre-judged the matter. Concedingly he could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu coming out on bail in the 3rd adverse case and that there is a likelihood of his coming out on bail in the ground case is a mere ipse dixit without any cogent materials.

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the

same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. On a careful scrutiny of the detention order, it is seen that the detaining authority, taking into account the imminent possibility of the detenu being enlarged on bail and the likelihood of the same is prejudicial to the public order and health, has passed the impugned detention order, wherein it has been mentioned as under in paragraph No.4 of the order:

4. I am aware that Thiru. Kubesh is in remand in S-9 Pazhavanthangal Police Station Crime Nos.785/2013 and 820/2013 and he has moved a bail application for S-9 Pazhavanthangal Police Station Crime No.820/2013 before the Court of Principal District and Sessions Judge, Chengalpattu, in CrI.M.P.No.4186/2013 and the same is pending. He has not filed any bail application for S-9 Pazhavanthangal Police Station Crime No.785/2013 so far. The sponsoring authority has stated that the relatives of Thiru Kubesh are taking action to take him out on bail in S-9 Pazhavanthangal Police Station Crime No.785/2013 by filing bail application before the appropriate court. It is pertinent to note that in a similar case registered at S-9 Pazhavanthangal Police Station Cr.No.785/2013 under Sections 341, 294(b), 323, 427, 392, 506(ii) r/w. 397 IPC bail was granted to the co-accused Thiru Rajesh by the Principal District and Sessions Judge at Chengalpattu in CrI.M.P.No.4068/2013. Hence, I infer that it is very likely of his coming out on bail in S-9 Pazhavanthangal Police Station Crime No.820/2013 and there is a real possibility of his coming out on bail in S-9 Pazhavanthangal PS.Cr.No.785/2013 by filing bail application before the appropriate court, since in similarly placed cases bails are granted by the 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....

7. A close reading of the impugned detention order shows that the detenu is in remand in the ground case [Cr.No.820/2013] and in the 3rd adverse case [Cr.No.785/2013] and he has not filed any bail application in the 3rd adverse case and the bail application filed by the detenu in the ground case in CrI.M.P.No.4186/2013 before the learned Principal District and Sessions Judge, Chengalpattu, was pending as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail application in the 3rd adverse case is not sufficient to pass an order of detention. Excepting the statement that the relatives of the detenu are taking steps to file bail application in respect of 3rd adverse case, no other cogent materials are placed on record to substantiate the same. When the bail application filed by the detenu in the ground case in Crime No.820 of 2013 is pending, it cannot be presumed that the detenu would come out on bail. Similarly, when no bail application is filed in Crime No.785 of 2013 [3rd adverse case], there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority

that there is a real possibility of his coming out on bail in the third adverse case would be a mere ipse dixit and the same would vitiate the order of detention, which shows improper application of mind on the part of the Detaining Authority. As rightly contended by the learned counsel appearing for the petitioner the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would automatically grant bail to the accused. It is nothing but pre-judging the matter. Therefore, on this ground also the impugned order is liable to be set aside. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained and the same is liable to be set aside.

8. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Kubesh, S/o. Mani, made in BDFGISSV No.1568/2013, dated 09.11.2013, is quashed and the habeas corpus petition is allowed. The above named detenu, who is detained at the Central Prison, Puzhal, Chennai, is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.