

(2014) 06 MAD CK 0264
In the Madras High Court
Case No : H.C.P. No. 2480 of 2013

Kumar

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 341, 392, 397, 427, 506(ii)

Citation : (2014) 06 MAD CK 0264

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the father of the detenu. The detenu has been branded as a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in C.M.P. No. 22/GOONDA/C2/2013 dated 22.09.2013.

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

Sr.No.

Police Station and Crime No.

Sections of Law

1.

Deevattipatti Police Station, Crime No.185/2010

394 r/w 397 IPC

2.

Annadhanapatty Police Station, Crime No.588/2011

379 IPC

3.

Annadhanapatty Police Station, Crime No.589/2011

379 IPC

4.

Annadhanapatty Police Station, Crime No.590/2011

379 IPC

5.

Annadhanapatty Police Station, Crime No.595/2011

379 IPC

6.

Namakkal Police Station, Crime No.451/2012

384, 506(ii) IPC

7.

Deevattipatti Police Station, Crime No.32/2013 Man missing @ 342,

364 (A), 392 r/w 397

and 120(B) IPC

The ground case alleged against the detenu is one registered on 19.08.2013 by the Sub Inspector of Police, Deevattipatti Police Station in Crime No. 388 of 2013 for the offences under Sections 392, 427 and 506(ii) IPC. Aggrieved by the order of detention, the present petition has been filed.

3. Though the learned counsel for the petitioner raised several grounds, his main submission is that the detaining authority has expressed subjective satisfaction over the real possibility of the detenu coming out on bail based on the bail order in a similar case and copy of the said bail order was not furnished to the detenu in the booklet and there is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and hence it is vitiated.

4. We have heard the learned Additional Public Prosecutor on the above point, who submits that the detenu has involved in serious offences and technical lapses cannot be the ground to quash the detention order.

5. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 4 of the grounds of detention are extracted below:

4. I am aware that Thiru. Mani @ Manikandan is in remand in Deevattipatti Police

Station Crime No. 388/2013 u/s. 392, 427, 506(ii) IPC and he has moved a bail application before the Principal Sessions Judge, Salem in C.M.P. No. 3213/2012 for the above case and the same is postponed on 23.09.2013. In a similar case registered against one Thiru. Duraisamy in Salem Town Crime Police Station Cr. No. 246/2012, u/s. 341, 392 r/w 397, 427 and 506(ii) IPC bail was granted by the Hon'ble High Court of Madras in Crl. O.P. No. 25955/2012 dated 19.11.2012. Hence I infer that it is very likely of his (Thiru Mani @ Manikandan) coming out on bail in the above case since bails are granted by the courts in such cases....

6. As seen from the extracted passage, the subjective satisfaction expressed by the detaining authority that there is real possibility of the detenu coming out on bail in the case in which he was on remand (ground case) is based on the bail order in Crl. O.P. No. 25955 of 2012 in a similar case in Crime No. 246/2012 on the file of Salem Town Police Station. A copy of the said order is not found in the booklet supplied to the detenu. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Therefore, non-furnishing of the bail order in a similar case prevented the detenu from making effective representation and the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Mani @ Manikandan, S/o. Kumar, made in C.M.P. No. 22/GOONDA/C2/2013 dated 22.09.2013 is quashed and the Habeas Corpus Petition is allowed. The above named detenu, who is detained in the Central Prison, Salem is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.