

(2010) 08 MAD CK 0088
In the Madras High Court
Case No : H.C.P. No. 321 of 2010

M. Rajesh

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5, 6
Penal Code, 1860 (IPC) — Section 109, 120, 147, 148, 149

Citation : (2010) 08 MAD CK 0088

Hon'ble Judges : M. Sathyanarayanan, J; M. Chockalingam, J

Bench : Division Bench

Advocate : M.R. Senthil Kumar, for the Appellant; Babu Muthumeeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order passed by the second respondent in No. 04/BDFGISSV/2010 dated 22.01.2010,

whereby the friend of the detenu by name Rajkumar @ Maya was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982

after terming him as ""Goonda"".

2. All materials are looked into in particular the order of detention under challenge. The Court heard the learned Counsel appearing for the petitioner and the respondents.

3. It is not in controversy that pursuant to the recommendation made by the sponsoring Authority that the detenu is involved in two adverse cases

viz. (i) Suthamalli Police Station Crime No. 07/2009 for the offences under Sections 147, 148, 302 of the Indian Penal Code read with Sections

149, 120(b), 109 of the Indian Penal Code and 4(b), 5(a) read with 6 of

Explosive Substances Act read with 149, 120(b) of the Indian Penal Code. (ii) Thachanallur Police Station Crime No. 598 of 2009 for the offences under Sections 294(b), 323, 506(i) of the Indian Penal Code and also a ground case in Crime No. 599 of 2009 registered by Thachanallur police station for the offences under Sections 147, 148, 294(b), 324, 307 and 506(ii) of the Indian Penal Code for the incident that had taken place on 21.12.2009, the Detaining Authority, on scrutiny of materials and after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, passed the order of detention under challenge.

4. Advancing arguments on behalf of the petitioner, learned Counsel would submit that the detenu filed a bail application in Crime No. 599 of 2009 before the District and Sessions Court, Tirunelveli in CrI.M.P. No. 5375 of 2009 and the same was dismissed on 5.1.2010. Thereafter, no bail application was actually filed in the second adverse case though he was remanded in both the cases on 22.12.2009. When the order of detention came to be passed on 22nd January, 2010, no bail application was pending before any criminal Court. But the Authority has stated that there was a real possibility of the detenu coming out on bail, which is without any material much less cogent material.

5. Learned Counsel added further that though the detenu was actually remanded on 22.12.2010 in the ground case and also the second adverse case and no bail application was filed insofar as second adverse case is concerned, the detention order would read as if a bail application was filed in the second adverse case also and the same was dismissed. Learned Counsel added further that copy of the accident register was actually served upon the detenu. When the original accident register was looked into, it contains five injuries were caused, but in the Tamil version, only three injuries were shown and thus, there was a discrepancy. Therefore, on these grounds, the detention order under challenge would suffer and the same has got to be set aside.

6. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made by either side.

7. As could be seen from the materials available, an order came to be passed on

22.01.2010 by the Detaining Authority after recording its

subjective satisfaction on the strength of the recommendation made by the Sponsoring Authority that the detenu was involved in two adverse cases

and one ground case referred to above. It is also an admitted position that the detenu made a bail application in respect of ground case in Crime

No. 599 of 2009 before the District and Sessions Court, Tirunelveli in CrI.M.P. No. 5375 of 2009 and the same was dismissed on 5.1.2010 and

he has not moved any bail application in the second adverse case. He was actually arrested and remanded to judicial custody in both the cases on

22.12.2009 itself. When the order of detention under challenge came to be passed on 22nd January, 2010, no bail application was pending before

any Criminal Court, but the Authority has stated in paragraph 6 as follows:

6. I am aware that Thiru C. Rajkumar alias Maya was produced before the Judicial Magistrate No. IV, Tirunelveli on 22.12.2009 and remanded

in Central Prison, Palayamkottai as a remand prisoner. Again he was produced before the Judicial Magistrate No. IV, Tirunelveli on 5.1.2010

through video conferencing and his remand was extended upto 19.01.2010. Again he was produced before the Judicial Magistrate No. IV,

Tirunelveli on 19.01.2010 through video conferencing and his remand was extended upto 02.02.2010. I am aware that Thiru. C. Rajkumar alias

Maya is in remand in connection with Thachanallur police Station Crime Numbers 598/2009 and 599/2009. I am aware that he has moved a bail

petition before the District and Sessions Court, Tirunelveli in CrI.M.P. No. 5375/2009 on 23.12.2009 in connection with Thachanallur Police

Station Crime Number 599/2009 and the same was dismissed on 05.01.2010. I am also aware that there is real possibility of his coming out on

bail by filing another bail petition in connection with Thachanallur Police Station Crime Number 599/2009 and filing bail petition in connection with

the case in Thachanallur Police Station Crime Number 598/2009 before the same court or higher court since in similar cases bails are granted by

the concerned court or High court. If he comes out on bail, he will indulge in further activities in future, 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 satisfied that the said Thiru. C.

Rajkumar alias Maya is a Goonda and there is compelling necessity to detain him in order to prevent him from indulging in acts which are

prejudicial to the maintenance of public order under the provisions of the Tamilnadu Act 14 of 1982.

8. From the above observations, it could be seen that bail application is actually filed in the ground case and the same was also dismissed and

subsequently, no bail application was filed. If to be so, when the order under challenge came to be passed, there was no material available in the

hands of the Authority to observe that there was a real possibility of the detenu coming out on bail. Apart from the same, as rightly pointed out by

the learned Counsel for the petitioner, the detenu has not moved any bail application insofar as the second adverse case is concerned. It was

contrarily observed as if the detenu made bail application in the second adverse case, which would indicate the non application of mind on the part

of the Authority.

9. Insofar as discrepancy in the translated version of the accident register is concerned, it need not be given importance since it is only a referred

document, not a relied upon document. Hence the third ground is not available to the petitioner. However, the order of the detention has got to be

set aside in view of ground Nos. 1 and 2.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in No.

04/BDFGISSV/2010 dated 22.01.2010. The detenu, namely, C. Rajkumar Alias Maya, who is now confined at Central Prison, Palayamkottai is

directed to be set at liberty forthwith unless his presence is required in connection with any other case.