

(2014) 04 MAD CK 0291
In the Madras High Court
Case No : H.C.P. No. 2059 of 2013

M. Saravanan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(3)
Penal Code, 1860 (IPC) — Section 109, 120(b), 147, 148, 149

Citation : (2014) 3 MLJ(Cri) 7

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

Bench : Division Bench

Judgement

V. Dhanapalan, J.—The petitioner is the brother of detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in BDFGISSV No. 127 of 2013 dated 04.09.2013. The detenu came to adverse notice in the following case:

The ground case alleged against the detenu is one registered on 19.07.2013 by the Sub-Inspector of Police, Chengalpattu Town Police Station in Crime No. 436 of 2013 for offences under Sections 147, 148, 294(b) and 307 IPC. Aggrieved by the order of detention, the present petition has been filed.

2. 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 inspite of detenu's request vide his representation to furnish the document relied on by the detaining authority for detaining him, the said material document has not been supplied to the detenu, which is against the constitutional mandate and therefore, on this sole ground, the detention order is liable to be quashed.

3. Per contra, learned Additional Public Prosecutor, by taking us to the counter, has contended that the detenu along with other accused persons has committed serious offence under Sections 147, 148, 450, 294(b), 506(ii), 307, 302 r/w 120(b), 109 and 149 IPC and a charge sheet was also filed before the learned

Judicial Magistrate No. 1, Chengalpet, which was taken on file vide PRC No. 24 of 2012 dated 25.02.2012. Further contention of learned Additional Public Prosecutor is that owing to his involvement in several cases, the detenu has been branded as History Sheeted Rowdy in H.S. No. 636 of 2013 in D-1, Chengalpet Town Police Station, Kancheepuram District and therefore, the detention order passed by the 2nd respondent is justifiable one, taking into account the gravity of offences committed by him.

4. We have heard the learned counsel on either side and perused the material documents available on record.

5. From a perusal of the impugned order, it is seen that the detenu/accused in connection with Crime No. 436 of 2013 was taken under Police custody between 01.08.2013 and 02.08.2013 and after investigation, he was again produced before the learned Judicial Magistrate No. 1, Chengalpattu and ordered to be remanded at Central Prison, Puzhal, Chennai as a remand prisoner and his remand period has been periodically extended upto 16.09.2013. In the order passed by the learned Judicial Magistrate No. 1, Chengalpattu on 01.08.2013, granting police custody, annexed at Page No. 165 of the booklet, it is stated as under:

The Sworn statement of the Inspector of Police, Chengalpattu Town Police Station was recorded. I have perused the Sworn Statement of the Inspector of Police, Chengalpattu Town Police Station and also the affidavit filed in support of this petition. I have inquired the accused regarding police custody and the accused is not willing for the same. For the purpose of the investigation. Hence I am satisfied u/s. 167(3) Cr.PC. that the accused (1) Abbu @ Karthick, Age. 27, s/o. Megarajan and (2) Viji @ Arun, age-25, S/o. Raji concerned in Crime No. 1077/2012 of D.1, Chengalpattu Town Police Station offence u/s: 147, 148, 294(b), 307 IPC are placed under the custody of police for Two days from today 01.08.2013 to 02.08.2013.

Immediately upon coming to known such material information, viz., sworn statement, he made a request to the detaining authority on 12.09.2013 to furnish a copy of the said document filed by the Investigating Officer before the concerned Magistrate so as to verify the relevancy of reliance. But, even after his request, the said document has not been furnished to him, which is the basis for granting police custody and is also construed as breach of constitutional mandate. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

6. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu Appu @ Karthick, S/o. Megarajan, made in BDFGISSV No. 127 of 2013 dated 04.09.2013 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. However, in view of serious objection raised

by the learned Additional Public Prosecutor, it is made clear that this order shall not preclude authorities concerned to effectively contest the matter before the Regular Court, uninfluenced by the above order. It is also made clear that this order shall not confer any right or advantage whatsoever to the detenu to claim anything before the Regular Court.