
(2011) 10 MAD CK 0165
In the Madras High Court
Case No : H.C.P.No. 804 of 2011

Maheema

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2)
Penal Code, 1860 (IPC) — Section 336, 341, 394, 397, 506

Citation : (2012) 1 MLJ 222

Hon'ble Judges : T. Sudanthiram, J;C. Nagappan, J

Bench : Division Bench

Advocate : S. Senthilvel for Mr. E. Kannadasan, for the Appellant; M. Maharaja Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—The wife of the detenu Murugesan is the petitioner in the habeas corpus petition and she has challenged the order of detention dated 22.6.2011 made in BDFGISSV No.27/2011 passed by the second respondent.

2.The detaining authority relied on three adverse cases, namely (1) Crime No.227/2011, (2) Crime No.256/2011 on the file of M-1, Madhavaram Police Station and (3) Crime No.190/2011, on the file of M-2, Madhavaram Milk Colony Police Station and also the ground case in Crime No.259/2011, on the file of M-1, Madhavaram Police Station, for the alleged offences under Sections 341, 336, 394, 397 and 506(ii) IPC, to arrive at a conclusion that the detenu is a "Goonda" as defined u/s 2(f) of the Tamil Nadu Act 14 of 1982.

3. The order of detention is challenged on various grounds. The main submission of the learned counsel for the petitioner is that the Detaining Authority, in paragraph No.3 of the grounds of detention, has observed that the detenu was arrested in the ground case in Crime No.259/2011 and was produced before the Judicial Magistrate, Thiruvetriyur on 5.5.2011 and he was ordered to be remanded till 19.5.2011 and thereafter, his remand period was further extended

upto 02.06.2011, 16.06.2011 and 30.06.2011 and the said observation with regard to the extension of remand from 16.6.2011 to 30.6.2011, is not supported by material and hence, the order of detention is vitiated.

4. The learned Additional Public Prosecutor submits that the detenu/accused was not produced in the ground case on 16.06.2011 and the learned Judicial Magistrate, Thiruvetriyur, passed an order recording the non-production of the accused and directing the authorities to produce him on 30.6.2011 and the copy of the said order is found in page 87 of the booklet and based on the said order, the observation regarding extension of remand in the ground case has been made.

5. There is no controversy with regard to the date of arrest of the detenu in the ground case in Crime No.259/2011 and his initial remand on 5.5.2011 and the subsequent remand till 16.6.2011. The contention of the learned counsel for the petitioner is that the observation in the grounds of detention that the remand was extended till 30.6.2011, is not supported by material. The document to which our attention was drawn by the learned Additional Public Prosecutor as the material for the said observation, is found in page 87 of the booklet and the same is sought to be interpreted as an order extending the remand of the detenu till 30.6.2011. The order dated 16.6.2011 passed by the Judicial Magistrate, Thiruvetriyur reads as follows:

Accused not produced. To be produced on 30.6.2011.

The above order is not one extending the remand of the detenu. The Detaining Authority has wrongly construed the above order as one extending the remand of the detenu upto 30.6.2011. Had the Detaining Authority applied its mind, it would have observed that the accused was not produced, but, however, he was directed to be produced on 30.06.2011. Failure to do so, shows non-application of mind on the part of the Detaining Authority, which vitiates the order of detention and on that ground alone the order of detention is liable to be set aside.

6. In this regard, this Court has already, in the decision in JAYALAKSHMI v.. STATE OF TAMIL NADU [2011 (1) MWN (Cr.) 283 (DB)], expressed anguish while noticing orders, similar to the order dated 16.6.2011, passed by the Judicial Magistrates on the jail warrants when the accused were not produced before the Judicial Magistrate for extension of remand and emphasized that they should not pass orders of remand without the production of the accused either in person or through video conferencing. The relevant observations, made in the said decision, are extracted below:

7. Section 167, Cr.P.C which deals with the remand of the Accused and extension of remand contains a Proviso to the effect that no Magistrate shall authorise detention of an Accused person, if the Accused is in police custody unless the Accused is physically produced before him and if the Accused is detained other than in the custody of police unless the Accused is produced before him either in person or through the media of electronic linkage. For the purpose of better

appreciation, the Proviso (b) to sub-section (2) of Section 167, Cr.P.C as amended by the Central Act 5/2009 reads as follows:

(b) no magistrate shall authorise detention of an Accused in custody of the Police under this section unless the Accused is produced before him in person for the first time and subsequently every time till the Accused remains in the custody of the Police, but the Magistrate may extend further detention in judicial custody on production of the Accused either in person or through the medium of electronic video linkage.

Thus it is made clear that for the first remand after arrest, physical production of the Accused before the Magistrate is necessary and for subsequent remands, namely remand extensions, the Accused may be produced before the Magistrate, either in person or through the media of electronic linkage. Even prior to the amendment, the un-amended Proviso (b) also provided such a condition for the remand or remand extension. No order of remand or remand extension should be made without such production indicated supra. Time and again repeated instructions have been issued in the form of judicial orders as well as administrative directions regarding the production of the Accused for remand and remand extension. Despite such instructions, we come across instances of such orders being passed, by the Judicial Magistrates either extending the remand or directing the Accused to be produced on a future date without seeing the accused. We emphasize the point that the learned Judicial Magistrates shall not pass any order on the Application seeking for extension of remand without the production of the Accused either in person or through video conferencing.

7. In the result, this habeas corpus petition is allowed and the impugned order of detention dated 22.6.2011, made in BDFGISSV No.27/2011, passed by the second respondent is set aside. The detenu Thiru. Murugesan, S/o. Thiru. Sundaram, is ordered to be set at liberty forthwith unless his custody is required in connection with any other case.