

(2014) 06 MAD CK 0171
In the Madras High Court
Case No : H.C.P. No. 2219 of 2013

Mathivanan

APPELLANT

Vs

The Secretary to Government, Home, Prohibition and Excise
Department

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Penal Code, 1860 (IPC) — Section 147, 148, 294(b), 302, 307

Citation : (2014) 06 MAD CK 0171

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" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in No. 940/BDFGISSV/2013 dated 09.09.2013.

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

Sl. No.

Police Station and Crime No.

Sections of Law

1.

P-6 Kodungaiyur Police Station

Crime No.687/2013

147, 148, 341, 324, 326, 307 & 506(ii) IPC @ 147, 148, 302 & 506(ii) IPC

2.

M-2 Madhavaram Milk Colony Police Station

Crime No.897/2013

392 IPC

The ground case alleged against the detenu is one registered on 23.08.2013 by the Inspector of Police, Crime, M-1, Madhavaram Police Station in Crime No. 1464/2013 for the offences under Sections 341, 294(b), 336, 392 r/w 397, 506(ii) IPC.

3. Besides several grounds to assail the order of detention, learned counsel for the petitioner focussed his arguments on the ground that though the detaining authority arrived at the subjective satisfaction that the relatives of the detenu are taking action to bail him out in Crime No. 1464/2013 by filing bail application before the appropriate court, there is no cogent material to support the decision of the detaining authority and therefore, on this sole ground, the detention order is liable to be quashed.

4. We have heard the learned Additional Public Prosecutor on the above submission.

5. For better appreciation of the case, relevant portion of the detention order is extracted hereunder:

4....The sponsoring authority has stated that the relatives of Thiru. Gandhi are taking action to take him on bail in M-1 Madhavaram Police Station Crime No. 1464/2013 by filing bail application before appropriate court. In a similar case registered at B-2, Esplanade Police Station Cr.No.981/2013 u/s. 341, 336, 427, 392 r/w 397 and 506(ii) IPC, bail was granted by the Court of Principal Sessions Judge, Chennai to the accused Velu @ Chinnavelu in CrI.O.P.No.4371/2013....

6. A reading of the detention order shows that the detaining authority has arrived at a subjective satisfaction that the relatives of the detenu are taking action to bail out the detenu in Crime No. 1464/2013 by filing bail application before the appropriate court. It is true that the detaining authority is empowered to take a decision if there is material to support the possibility of the detenu coming out on bail. But, on verification of the material documents, it is seen that no cogent material is available to support the decision of the detaining authority. The same, which amounts to infringement of right ensured under Article 22(5) of the Constitution of India, vitiates the order of detention. Thus, for the reason stated hereinabove, the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu Gandhi made in No. 940/BDFGISSV/2013 dated 09.09.2013 is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

8. However, it is made clear that this order shall not preclude the 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.