
(2010) 11 MAD CK 0271
In the Madras High Court
Case No : H.C.P. No. 1564 of 2010

Mrs. K. Bhavani

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 336, 341, 384

Citation : (2010) 11 MAD CK 0271

Hon'ble Judges : M. Chockalingamand, J;C.S. Karnan, J

Bench : Division Bench

Advocate : A.S. Narasimhan, for the Appellant; M. Babu Muthu Meeran,
Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J. 1. Challenge is made to the order of detention passed by the the second Respondent in memo No. 279/B.D.F.G.I.S.S.V./2010 dated 10.5.2010, whereby the husband of the Petitioner viz. Kannan was ordered to be detained under the Act 14 of 1982 branding him as "Goonda".

2. The Court heard the learned Counsel appearing for the Petitioner and looked into the materials available on record, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendation made by the Sponsoring Authority that the detenu is involved in four adverse cases viz. (i) Crime No. 1521 of 2008 registered by J.3 Guindy Police Station for the offences under Sections 385 and 506(2) of the Indian enal Code; (ii) Crime No. 444 of 2009 registered by J.3 GuindyPolice Station for the offences under Sections 324, 384 and 506(2) of the Indian Penal Code; (iii) Crime No. 59 of 2010 registered by J.3 Guindy Police Station for the offences under Sections 341, 392 and 506(2) of the Indian Penal Code; (iv) Crime No. 111 of 2010 registered by J.3 Guindy Police Station for the offences under Sections 341, 448, 427, 392, 307 and 506(2) of the Indian Penal Code and one ground case in Crime No. 263 of 2010

registered by J.3 Guindy Police Station for the offences under Sections 341, 336, 392, 307 and 506(ii) of the Indian Penal Code for the incident that had taken place on 3.5.2010 and the detenu was arrested on the very day, the Detaining Authority, on scrutiny of materials placed, passed the detention order, after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, which is the subject matter of challenge before this Court.

4. Learned Counsel raised two points to set aside the detention order. Firstly, from page Nos. 15 to 77, some of the pages were found missing, which, actually contained some material documents. Even a representation was made on 23.5.2010, but they were actually not supplied. Hence the detenu was deterred from making effective representation.

5. Learned Counsel added further that in the ground case, the detenu was arrested on 3.5.2010 and thereafter, he has not moved for any bail application and the detention order came to be passed on 10.5.2010 wherein the Authority has stated that there was a real possibility of the detenu coming out on bail. When no bail application was filed, that too in a grave case, ordinarily bail would not be granted till completion of investigation, the observation made by the Detaining Authority is without any material. On these grounds, the detention order 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.

7. As could be seen from the available materials, the Detaining Authority has made the order of detention terming the detenu as a Goonda, on the strength of the materials placed before him pertaining to four adverse cases and one ground case as referred to above, and has recorded the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

8. Firstly, from page Nos. 15 to 77, some of the pages were found missing, which, actually contained some material documents. Even a representation was made on 23.5.2010, but the documents asked for in the representation were actually not supplied. Hence the detenu was deterred from making effective representation.

9. Secondly, in the ground case, the detenu was arrested on 3.5.2010 and thereafter, he has not moved for any bail application and the detention order came to be passed on 10.5.2010 i.e. within a short span of one week. However, the Authority has stated in paragraph 4 of the detention order that there was a real possibility of the detenu coming out on bail. When no bail application was filed, that too in a grave case, ordinarily bail would not be granted till completion of investigation, the observation made by the Detaining Authority is without any material much less cogent material, which the law would require. On these grounds, the detention order has got to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second Respondent in memo No. 279/B.D.F.G.I.S.S.V./2010 dated 10.5.2010. The detenu, namely, Kannan, who is now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.