

(2009) 04 MAD CK 0485

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 683 of 2008

Muppidathi

APPELLANT

Vs

The District Revenue Officer and District Collector and District Magistrate, (Full Additional Charge), The Secretary to the Government, Home Prohibition and Excise Department and The Inspector of Police

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 307, 341, 387, 397

Citation : (2009) 04 MAD CK 0485

Hon'ble Judges : R. Mala, J;M. Chockalingam, J

Bench : Division Bench

Advocate : R. Anand, for the Appellant; M. Daniel Manohar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—In this writ application challenge is made to an order of the first respondent made in M.H.S. Confdl. No. 104/2008 dated 08.07.2008, whereby the husband of the petitioner namely Mariappan alias Kundumariappan was ordered to be detained under the provisions of Dangerous Activities of Bootleggers, Drug offenders, Forest offenders, Goondas, Immoral Traffic offenders, Sand offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (hereinafter referred as the Act) terming him as a "Goonda" as defined under the provisions of the Act.

2. The Court heard the learned Counsel for the petitioner also the learned Government Advocate appearing for the State and also looked into all the materials available and in particular the order under challenge.

3. It is not in controversy that the said Mariappan alias Kundumariappan was involved in two adverse cases namely in Cr. No. 221/2006 u/s 397 IPC on the file of Suthamalli Police Station and Cr. No. 47/2008 under Sections 341, 294(b),

387 and 506(ii) IPC on the file of Pathamadai Police Station and he was also involved in one ground case registered on 14.06.2008 in Cr. No. 122/2008 under Sections 294(b), 307 and 506(ii) IPC on the file of Suthamlli Police Station. Pursuant to the recommendations made by the sponsoring authority, the detaining authority has recorded his subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the Public Order and hence he has got to be detained under the provisions of the Act by terming him as a "Goonda". Accordingly, the order which is the subject matter of challenge before this Court, was made.

4. The order is challenged on the following grounds by the learned Counsel for the petitioner.

i) The detenu has moved for bail in the first adverse case i.e. in Cr. No. 221/2006, in Cr.M.P. No. 2070/2008 and the same was dismissed by the Court of Sessions, Tirunelveli on 25.06.2008. He has not filed any bail application in the other adverse case. Thus on the day when the order came to be passed, there was no bail application pending before any Criminal court in that case. But the detaining authority in its order has observed that the detenu is very likely to come out on bail. The said observation was baseless and prejudging the situation without any materials.

ii) Even on 07.06.2008 pre-detention representation was made to all the authorities including the detaining authority by way of telegraphic message. Though the said telegrams were received, the said pre-detention representation was neither considered nor decided in order to place before the advisory board.

iii) When copies of the materials were supplied to the detenu, a discrepancy is found in the translated version. The learned Counsel for the petitioner took the Court to page number 87 of the typed set of papers where he pointed out the translation of the remand order of the English version. When it is translated to Tamil, it was not found to be in order, but a different one and it did not convey what was in English version and thus it also did not enable the detenu to understand the same.

iv) Non supply of bail order to the detenu and

v) there was a delay in consideration of the representation.

5. The Court heard the learned Additional Public Prosecutor and paid its anxious consideration on the same.

6. It is not in controversy that the detenu was involved in two adverse cases and one ground case in Cr. No. 122/2008 on the file of Suthamalli Police Station for an incident that took place on 14.06.2008 and he was arrested on 15.06.2008. It is also not in controversy that he made bail application in the first adverse case in Cr.M.P. No. 2070/2008, and the same came to be dismissed on 25.06.2008. Thus, there is no material to indicate that there was any bail application filed thereafter in that case or in the other adverse case and they were pending before

any criminal court. The order came to be passed on 08.07.2008, but the authority has pointed out in its order that the detenu is very likely to come out on bail. The said observation was only an apprehension in the mind of the authority and without any materials or reasons whatsoever and thus it would certainly affect the order.

7. The pre-detention representation in the form of telegraphic message was placed before this Court. It would clearly indicate that the telegraphic message was sent earlier but there is nothing to indicate that they were actually considered or decided to see that the materials are placed before the advisory board for further consideration. Thus, undoubtedly the order would suffer.

8. Thirdly, as rightly pointed out by the learned Counsel for the petitioner that a Tamil version was supplied upon the detenu. It should contain the exact version of the English version. Otherwise, a person like detenu who was not conversant with English language will not understand what were the materials supplied to him. A perusal of the remand order made in Cr. No. 122/2008 would indicate that what was found to be therein was not the actual translation of the English version and In so far as the non-supply of the bail order to the petitioner, the State has no answer to put forth. It is needless to state that the order of dismissal of the bail application was one of the materials which was a document to be relied upon by the detaining authority. If to be so, a copy of the same should be supplied to the detenu. There is no answer for this from the State. The above grounds are suffice to set aside the order. All the above said grounds are suffice to set aside the order under challenge.

8. Accordingly, the Habeas Corpus Petition is allowed and the detention order in M.H.S. Confdl. No. 104/2008 dated 08.07.2008 passed by the first respondent is quashed. The detenu is directed to be set at liberty forthwith unless his presence, in accordance with law, is required in connection with any other case.