

(2010) 12 MAD CK 0292
In the Madras High Court
Case No : H.C.P. No. 1852 of 2010

Naduvan Sekar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 324, 332

Citation : (2010) 12 MAD CK 0292

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

Bench : Division Bench

Advocate : C.C. Chellappan, for the Appellant; V.R. Balasubramanian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition is brought forth by the detenu himself challenging the order of the second Respondent in proceedings No. 499/2010 dated 3.9.2010, whereby he was ordered to be detained as a Goonda under the provisions of the Act 14 of 1982.

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 three adverse cases viz. (i) Crime No. 1729 of 2008 registered by J-6, Thiruvanmiyur P.S. for an offence u/s 379 of the Indian Penal Code; (ii) Crime No. 995 of 2009 registered by J-7, Velachery P.S. for the offences under Sections 385 and 506(ii) of the Indian Penal Code; (iii) Crime No. 1031 of 2009 registered by J-7, Velachery P.S. for the offences under Sections 341, 336, 324, 307, 392 and 427 of the Indian Penal Code and one ground case in Crime No. 466 of 2010 registered by J-8, Neelankarai Police Station for the offences under Sections 147, 148, 341, 332, 307, 427 and 506(ii) of the Indian Penal Code for the incident that had taken

place on 23.6.2010 and the detenu was arrested 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. While advancing arguments on behalf of the Petitioner, learned Counsel would submit that in the instant case, the arrest was made on 23.6.2010 and the order of detention came to be passed on 3.9.2010. From the time of arrest viz. 23.6.2010 till the detention order came to be passed on 3.9.2010, no intervening circumstances are noticed by the Authority. There was an inordinate delay of more than two months in passing the detention order. Thus, it would be suffice to vitiate the detention order, since there is no basis for the Detaining Authority to pass the detention order.

5. Learned Counsel added further that the detenu was arrested in the ground case on 23.6.2010 and produced before the Court and remanded to judicial custody on the same day. He moved a bail application before this Court in CrI.O.P. No. 18022 of 2010 and the same was dismissed, but the detention order did not reflect the date, as to when it was actually dismissed. It is pertinent to point out that when the bail application was dismissed by the Appellate Forum viz. High Court, the Authority has observed that there is a real possibility of the detenu coming out on bail. The said observation is without any basis.

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 three 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. It is not in controversy that in the instant case, the arrest was made on 23.6.2010 and the order of detention came to be passed on 3.9.2010. From the time of arrest viz. 23.6.2010 till the detention order came to be passed on 3.9.2010, no intervening circumstances are noticed by the Authority. There was an inordinate delay of more than two months in passing the detention order. Thus, it would be suffice to vitiate the detention order, since there is no basis for the Detaining Authority to pass the detention order.

9. Added further, the detenu was arrested in the ground case on 23.6.2010 and produced before the Court and remanded to judicial custody on the same day. He moved a bail application before this Court in CrI.O.P. No. 18022 of 2010 and the same was dismissed, but the detention order did not reflect the date, as to when it was actually dismissed. It is pertinent to point out that when the bail application was dismissed by the Appellate Forum viz. High Court, the Authority

has observed in paragraph 4 of the detention order that there is a real possibility of the detenu coming out on bail. The said observation is without any material. It is only an expression of the impression in the mind of the Authority and only an inference and that too without any basis or materials much less cogent materials as the law would require.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second Respondent in proceedings No. 499/2010 dated 3.9.2010. The detenu, namely, Naduvan Sekar, 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.