
(2010) 06 MAD CK 0309

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 200 of 2010

R. Joseph

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 307, 323, 324, 341

Citation : (2010) 06 MAD CK 0309

Hon'ble Judges : M. Chockalingam, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : C. Mayil Vahana Rajendran, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the 2nd respondent, dated 30.01.2010, whereby the petitioner by name Joseph, S/o. Raman, was ordered to be detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, terming him as a "Goonda".

2. The affidavit and the materials filed in support of the petition, in particular the order under challenge, are looked into. The Court heard the learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was to be detained under Tamil Nadu Act 14 of 1982, as he was involved in two adverse cases, as detailed below,

Sl. No. Police Station & Crime Number Provisions of law
1. Tirunelveli Town Police Station Crime Under Sections 294(b), 353, 506(ii) IPC No. 442/2009
2. Tirunelveli Town Police Station Crime Under Sections 294(b), 323, 324, 506(ii) IPC No. 782/09

and also in the ground case in Crime No. 791/2009, registered under Sections 341, 294(b), 307, 506(ii) IPC on the file of Tirunelveli Town Police Station for a crime that had taken place on 09.12.2009, in which he was arrested on the very day and remanded to judicial custody, on scrutiny of the materials placed before him, the detaining authority, the 1st respondent herein, after recording his subjective satisfaction that the activities of the alleged detenu were prejudicial to the maintenance of public order, branded him as a "Goonda" and ordered him to be detained under Tamil Nadu Act, 14 of 1982, which is the subject matter of challenge before the Court.

4. At the time of advancing arguments on behalf of the petitioner, the learned Counsel for the petitioner submitted that the detenu moved a bail application in the ground case Crime No. 791/2009 before the District and Sessions Judge, Tirunelveli, in CrI.M.P. No. 117/2010 and the same was dismissed on 11.01.2010 and thereafter the detenu did not file any bail application before any court of criminal law, but, the detaining authority has stated that there was a real possibility of the detenu coming out on bail while bail application filed in the ground case was dismissed and no bail application was filed thereafter and, therefore, the observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis or material whatsoever and this shows non-application of mind on the part of the detaining authority and hence the detention order has got to be set aside. Added further the learned Counsel that insofar as the order of dismissal of the bail application in CrI.M.P. No. 117/2010 was concerned, copy of the order was actually not supplied and in the course of the representation, such a request was made and despite the same, it was not supplied. Hence, the learned Counsel further urged that it is a relied on document to record subjective satisfaction and if that be so, copy of the same should have been supplied but, not done so and hence the same would also vitiate the order of detention.

5. The Court heard the learned Additional Public Prosecutor for the State on the above contentions put-forward by the counsel for the petitioner.

6. After looking into the materials available on record and considering the submissions made on either side, the Court has to necessarily agree with the learned Counsel for the petitioner and the impugned order of detention has got to be set aside on both the grounds urged by him.

7. It is not in controversy that the detenu was ordered to be detained under Act 14/1982 on the recommendations made by the Sponsoring Authority that he was involved in two adverse cases and in one ground case referred to above. It is true that three cases were registered against the detenu, namely two adverse cases and one ground case. Relevant portion in paragraph 6 of the grounds of detention reads as follows:

6. I am aware that Thiru R. Joseph was produced before the Judicial Magistrate No. IV, Tirunelveli on 09.12.2009 and remanded in Central Prison, Palayamkottai

on that day itself. He was produced before the Judicial Magistrate No. IV, Tirunelveli on 23.12.2009 through video conferencing and his remand was extended upto 06.01.2010. Again he was produced before the Judicial Magistrate No. IV, Tirunelveli on 06.01.2010 through video conferencing and his remand was extended upto 20.01.2010. Again he was produced before the Judicial Magistrate No. IV, Tirunelveli on 20.01.2010 through video conferencing and his remand was extended upto 03.02.2010. I am aware that Thiru R. Joseph is in remand in connection with Tirunelveli Town Police Station Crime Numbers 782/2009 and 791/2009. I am also aware that he has moved a bail petition before the District and Sessions Court, Tirunelveli in CrI.M.P. No. 117/2010 on 07.01.2010 in connection with the case in Tirunelveli Town Police Station Crime Number 791/2009 and the same was dismissed on 11.01.2010. I am also aware that there is real possibility of his coming out on bail by filing another bail petition before the same court or higher court....

8. A reading of the above would clearly indicate that the detenu filed bail application in the ground case Crime No. 791/2009 in CrI.M.P. No. 117/2010 and the same was dismissed by the District and Sessions Court, Tirunelveli, on 11.01.2010. Despite the dismissal of bail application by the Sessions Judge on 11.01.2010, the detention order came to be passed on 30.01.2010, wherein the detaining authority has stated that there was a real possibility of the detenu coming out on bail by filing fresh application. Hence, when the detention order came to be passed when no bail application was pending, the observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis at all. Law requires that to record such a satisfaction, there must be not only material but cogent material available. In the instant case, there was no material, much less cogent material, available for the detaining authority to record such a satisfaction. Under such circumstances, the order impugned in the present petition has got to be set aside.

9. In so far as the 2nd contention is concerned, it is represented by the learned Additional Public Prosecutor for the State that what is found in page No. 197 of the Booklet, there is an endorsement made by the learned Public Prosecutor that the bail application in CrI.M.P. No. 117/2010 was dismissed and hence it would satisfy the request made by the petitioner. The Court is unable to agree with the contention put-forth by the learned Counsel for the State. It cannot be denied that the order of dismissal of CrI.M.P. No. 117/2010 was not a relied on document and hence a duty was cast upon the authorities to supply the said document also. Mere endorsement made by the Prosecutor that the application was dismissed would not suffice. The detenu should be supplied with the copy of the order of dismissal, only then he could understand the reasons on which the application was dismissed by the Court. Hence the non-supply of the order of dismissal of the bail application will also make the order of detention defective. Under such circumstances, both the grounds are available to the petitioner for quashing the detention order.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. 05/BDFGISSV/2010, dated 30.01.2010, passed by the 1st respondent is quashed. The detenu R. Joseph, S/o. Raman, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.