
(2010) 06 MAD CK 0314

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 182 of 2010

Rabbunisha

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 341, 387, 392, 397, 452

Citation : (2010) 06 MAD CK 0314

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

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the 2nd respondent, dated 24.02.2010, whereby one Ansari @ Mohamed Ansari, son of the petitioner, 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 three adverse cases, as detailed below,

Sl. No. Police Station & Crime Number Provisions of law 1. Tiruppur Rural Police Station Crime Under Sections 392, 506(ii) IPC altered in to No. 131/2008 452, 392, 506(ii) IPC 2. Srivilliputhur Town Police Station Under Sections 387, 506(ii)

IPC Cr. No. 423/09 3. Sivakasi Town Police Station u/s 397 @ 392, 397, 506(ii) IPC Cr. No. 764/09 and also in the ground case in Crime No. 85/2010, registered under Sections 341, 397, 506(ii) IPC on the file of Srivilliputhur Town Police Station for a crime that had taken place on 11.02.2010, 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 2nd 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 raised two grounds. Firstly, it is contended that the detenu has not moved any bail application in the ground cases but, the detaining authority in paragraph No. 5 of the grounds of detention has recorded his satisfaction that there was a real possibility of the detenu coming out on bail and, therefore, according to the learned Counsel, the subjective satisfaction so arrived by the detaining authority was not based on any material and on this ground the detention order is liable to be quashed. Secondly, it is submitted by the learned Counsel that as per the mandate u/s 10 of the Tamil Nadu Act 14/1982, all the materials relating to the order of detention should be placed before the Advisory Board within three weeks from the date of order and though a specific ground of attack was raised in the petition, no reply is coming from the side of the State and there is no cogent material placed to show when the materials were placed before the Advisory Board.

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 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 three adverse cases and in one ground case referred to above. It is true that four cases were registered against the detenu, namely three adverse cases and one ground case. A reading of paragraph 5 of the grounds of detention reads as follows:

5.I am aware that Thiru. Ansari @ Mohamed Ansari has been remanded to judicial custody upto 25.02.2010 in District Prison, Virudhunagar in connection with Srivilliputhur Town Police Station Cr. No. 85/2010. In adverse cases in Cr No. 423/09 and Cr No. 764/0910 of Srivilliputhur Town Police Station against him, he obtained bail in the concerned court. After coming out on bail, he committed crimes in two adverse cases and in the ground case. Hence, there is

real possibility of his coming out on bail in the ground, by filing bail application before the concerned court or higher court by Thiru. Ansari @ Mohamed Ansari....

8. A reading of the above would clearly indicate that the detenu did not move any bail application in the ground case and he was in judicial custody. However, the detaining authority has stated that there was a real possibility of the detenu coming out on bail by filing application and thus it can be well commented that it was only the apprehension in the mind of the detaining authority and without any basis or material whatsoever. The law, under such circumstances, requires that before recording subjective satisfaction, sufficient and cogent materials must be available for the detaining authority to record so. In the instant case, it was not available but, the detaining authority has recorded that there was a real possibility of the detenu coming out on bail, which would indicate non-application of mind on the part of the detaining authority, which, in the considered opinion of the Court, would vitiate the order of detention.

9. In so far as the second contention raised by the learned Counsel for the petitioner, Section 10 of the Tamil Nadu Act 14/1982 mandates that all the materials must be placed before the Advisory Board within a period of three months from the date of passing of the order. There is a specific allegation raised by the petitioner that it was not done so. Hence, a duty is cast upon the respondents to point out whether it was actually placed before the Advisory Board as envisaged u/s 10 of the Act. The answer given by the learned Additional Public Prosecutor that it was actually sent by the Detaining Authority to the Government on 25.02.2010 cannot be accepted. The date on which when it was actually placed before the Advisory Board is relevant but, no answer is forthcoming. Under such circumstances, it can be well stated that the respondents have no answer to place before this Court and hence the contention put-forth by the petitioner has got to be accepted. Hence, both the grounds are available to the petitioner for setting aside the order of detention.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. Cr.M.P. No. 09/2010, dated 24.02.2010, passed by the 2nd respondent is quashed. The detenu Ansari @ Mohamed Ansari, S/o. Anwar @ Syed Anwar @ Mohamed Answer, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.