
(2014) 06 MAD CK 0266
In the Madras High Court
Case No : H.C.P. No. 2172 of 2013

Rajakumari

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Penal Code, 1860 (IPC) — Section 294(b), 323, 336, 341, 392

Citation : (2014) 06 MAD CK 0266

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the wife of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in No. 949/BDFGISSV/2013 dated 10.09.2013.

2. The detenu came to adverse notice in the following cases:-

Sl.No.

Police Station and Crime No.

Sections of Law

1.

B-2 Esplanade Police Station, Crime No.705/2013

341, 294(b), 323, 324, 307 & 506(ii) IPC @ 302 IPC r/w 34 IPC

2.

B-2 Esplanade Police Station, Crime No.981/2013

341, 336, 427, 392 r/w 397 & 506(ii) IPC

The ground case alleged against the detenu is one registered on 23.08.2013 by the Inspector of Police, Law & Order, B2 Esplanade Police Station in Crime No. 2006/2013 for the offences under Sections 341, 294(b), 323, 392, 397 and 506(ii) IPC.

3. Besides several grounds to assail the order of detention, learned counsel for the petitioner focussed his arguments on the ground that the detaining authority has stated in paragraph 4 of the detention order that the detenu has filed a bail petition in Crime No. 2006/2013 before the Principal Judge, Sessions Court, Chennai in Crl. M.P. No. 11248/2013 and the same is pending, but the Special Report annexed in the booklet at page 146 would show that the bail petition in Crl. M.P. No. 11248/2013 was dismissed on 10.09.2013. Therefore, he would contend that there is non-application of mind on the part of the detaining authority while passing the detention order and on this ground, the detention order is liable to be quashed.

4. We have heard the learned Additional Public Prosecutor on the above submission.

5. For better appreciation of the case, relevant portion of the detention order is extracted hereunder:

4.... I am also aware that Thiru. Velu was remanded in B-2 Esplanade P.S. Crime No. 2006/2013 has filed a bail petition in B-2 Esplanade Police Station Cr. No. 2006/2013 before the Principal Judge, Sessions Court, Chennai vide Crl. M.P. No. 11248/2013 and the same is pending. In a similar case registered at B-2 Esplanade Police Station in Crime No. 981/2013 u/s. 341, 336, 427, 392 r/w 397 and 506(ii) IPC, bail was granted by the High Court, Chennai to the accused Velu @ Chinnavelu, in Crl. O.P. No. 4371/2013. Hence, I infer that it is very likely of him coming out on bail in B-2, Esplanade Police Station Cr. No. 2006/2013 and there is real possibility of his coming on bail by filing another bail application before appropriate court. If he comes out on bail, he will further indulge in such activities in future, which will be prejudicial to the maintenance of public order....

6. A reading of the detention order shows that the detaining authority has stated that the detenu has filed a bail petition in Crime No. 2006/2013 before the Principal Judge, Sessions Court, Chennai in Criminal M.P. No. 11248/2013 and the same is pending. But, on verification of the booklet, the Special Report furnished at page 146 would show that a bail application in Crl. M.P. No. 11248/2013 filed with regard to Crime No. 2006/2013 was dismissed on 10.09.2013, on which date, the impugned detention order was passed. Hence, it is clear that there is non-application of mind on the part of the detaining authority while arriving at the subjective satisfaction with regard to the material information. The same, which amounts to infringement of right ensured under Article 22(5) of the Constitution of India, vitiates the order of detention. Thus, for the said reason, the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the 2nd respondent,

detaining the detenu Velu made in No. 949/BDFGISSV/2013 dated 10.09.2013 is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

8. However, it is made clear that this order shall not preclude the authorities concerned to effectively contest the matter before the Regular Court, uninfluenced by the above order. It is also made clear that this order shall not confer any right or advantage whatsoever to the detenu to claim anything before the Regular Court.