
(2010) 04 MAD CK 0189
In the Madras High Court
Case No : H.C.P. No. 2282 of 2009

Ramu @ Ram Kumar

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 294, 307, 324

Citation : (2010) 04 MAD CK 0189

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

Bench : Division Bench

Advocate : K. Mathan, for the Appellant; V.R. Subramaniam, APP, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This writ petition is filed challenging the order of detention made by the 2nd respondent dated 16.11.2009 whereby the petitioner detenu was ordered to be detained under Act 14 of 1982 branding him as a Goonda as defined under the provisions of the Act.

2. The Court heard the learned Counsel on either side and looked into all the materials available including the order under challenge.

3. Admittedly consequent upon the recommendation made by the sponsoring authority that the said detenu was involved in seven adverse cases namely (1) registered by St. Thomas Mount Police Station in Crime No. 838 of 2006 u/s 379 IPC (2) registered by R-10 MGR Nagar Police Station in Crime No. 122 of 2008 under Sections 341, 324 and 506(2) IPC (3) registered by R-10 MGR Nagar Police Station in Crime No. 969 of 2008 u/s 399 IPC (4) registered by E-3 Teynampet Police Station in Crime No. 2388 of 2008 under Sections 147, 148, 341, 324, 427, 336, 307 and 506(ii) IPC (5) registered by R-10 MGR Nagar Police Station in Crime No. 707 of 2009 under Sections 385, 427 and 506 IPC (6) registered by R-10 MGR Nagar Police Station in Crime No. 731 of 2009 under

Sections 385, 427 and 506 IPC and (7) registered by R-10 MGR Nagar Police Station in Crime No. 736 of 2009 under Sections 385, 427 and 506 IPC and also another case shown as ground case in Crime No. 1166 of 2009 u/s 307 IPC registered by R-10 MGR Nagar Police Station for an occurrence that had taken place on 22.10.2009, on scrutiny of the materials, the detaining authority has recorded its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order and has made the order under challenge after branding him as Goonda.

4. Advancing arguments on behalf of the petitioner, the learned Counsel made the following submissions:

Firstly, in the last adverse case shown as Crime No. 736 of 2009, he has moved a bail application and he was released on 05.07.2009. Nextly the detenu filed Cr.M.P. No. 10270 of 2009 on the file of the Principal Sessions Judge, Chennai and the same was dismissed on 10.11.2009. While the matter stood thus, the order of detention order came to be passed on 16.11.2009 observing that there was a real possibility of the detenu coming out on bail and this was without any basis whatsoever. Thirdly, the Special report placed by the sponsoring authority did not refer to the filing of the bail application or the dismissal thereon and thus it has been suppressed. Fourthly, the detenu's confession is shown to have been given at about 07.40 a.m. on 23.10.2009, in the ground case, but he was taken to the police station only at about 09.50 a.m. as shown in page 142 and hence such a confession could not have been made at all. Under such circumstances the detaining authority should have called for a clarification but not done by the detaining authority. The learned Counsel also urge that there were some discrepancies in the place where he was actually produced before the Metropolitan Magistrate and hence on all the grounds, the order has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor on both the contentions and paid its anxious consideration on the submissions made.

7. After doing so, the Court is of the considered opinion that only two grounds are available to him. Firstly, the detenu had made a bail application on 03.11.2009 in Cr.M.P. No. 10270 of 2009 on the file of the Principal Sessions Judge, Chennai and the same was dismissed on 10.11.2009. The order under challenge was made on 16.11.2009, even in the short interval of 5 or 6 days. Thus, it could be quite clear that on the day when the order of detention came to be made, there was no bail application pending. On the contrary, the detaining authority has observed that there was a real possibility of the detenu coming out on bail. This can only be an inference without any basis or material much less cogent material at all. Before recording the subjective satisfaction the detaining authority must look into whether there was a situation or circumstances which would lead to the opinion that there was a real possibility of the detenu coming out on bail. In the instant case no such material was available at that time. Under such circumstances, it can be stated that the authority has not applied his

mind properly.

8. Apart from that, a special report was also placed by the sponsoring authority before the detaining authority. It does not indicate the filing of the bail application referred to above on 3.11.2009 or dismissal of the same on 10.11.2009 and hence a clarification should have been asked for, but not done so. All would suffice to set aside the order.

9. In so far as the other grounds are concerned, the Court is unable to appreciate or agree with the contention put forth by the learned Counsel for the petitioner and hence they are not available for him. In so far as the other two above grounds are concerned, they would suffice to set aside the detention order.

10. Accordingly, this Habeas Corpus Petition is allowed setting aside the order of the second respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.