
(2010) 08 MAD CK 0476

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 213 of 2010

Rani Bai

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 147, 148, 294, 323, 324

Tamil Nadu Prevention of Harassment of Women (Amendment) Act, 2002 — Section 4

Citation : (2010) 08 MAD CK 0476

Hon'ble Judges : M. Duraiswamy, J; M. Chockalingam, J

Bench : Division Bench

Advocate : T. Jeen Joseph, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—In this writ petition filed under Article 226 of the Constitution, challenge is made to the order of the 2nd respondent, dated 10.12.2009, whereby one John @ Jegan, 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, branding 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 said John @ Jegan was involved in four adverse cases, as detailed below,

Sl. No. Police Station & Crime Number Provisions of law 1. Karungal Police

Station Crime No. 252/2007 u/s 147, 148, 341, 294(b), 324, 323, 506(ii) IPC @ u/s 147, 148, 341, 294(b), 326, 506(ii) 2. Nesamony Nagar Police Station Crime u/s 452, 506(ii) IPC and Section 4 of No. 168/2008 Tamil Nadu Harassment of Women Act, 2002 3. Boothapandi Police Station Crime u/s 395 IPC No. 273/2009 4. Aralvoimozhi Police Station Crime u/s 366(A), 395 IPC and Section 4 of No. 275/2009 Tamil Nadu Harassment of Women Act, 2002 @ u/s 366(A), 395, 376(g) IPC and Section 4 of Tamil Nadu Harassment of Women Act, 2002 and also in the ground case Crime No. 378/2009, registered u/s 387, 506(ii) IPC on the file of Aralvoimozhi Police Station for a crime that had taken place on 28.10.2009, 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 2nd respondent herein, after recording his subjective satisfaction that the alleged detenu was so acting in a manner 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 urged two grounds, which according to him, are sufficient to set aside the order of detention.

(a) Firstly, the detenu has applied for bail in the ground case Crime No. 378/2009 before the Judicial Magistrate, Boothapandy in CrI.M.P. No. 7243/2009 and the same was dismissed on 26.11.2009 and thereafter no bail application was made by the detenu 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 by making bail application afresh and since at the time when the detention order came to be passed no bail application was either filed or pending before any court of law, the observation so made by the detaining authority was without any material much less cogent material.

(b) Added further the learned Counsel, pointing out the Arrest Memo which is at page No. 154 and 155 of the booklet, would content that though the detenu was arrested on 28.10.2009 in connection with the ground case crime No. 378/2009, it is shown in the Arrest Memo as if intimation was given to the relative of the detenu by name Mani as to the cause of arrest but, as could be seen from the same, it was actually signed by the Inspector of Police, Aralvoimozhi, on 28.11.2009 and if this is taken as correct, then the intimation could have been given to the relative of the detenu only after a period of one month and in such circumstances a clarification should have been called for by the detaining authority but it has not been done so. Added further the learned Counsel, in the same arrest memo, at column No. 12, it is stated that the intimation was not only in respect of the arrest of the detenu in the ground case but also in respect of preventive detention and this is indicative of the fact that the order of detention was a pre-determined one and this vitiates the detention order.

5. The Court heard the learned Additional Public Prosecutor for the State on the

submissions made 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 is of the considered opinion that the order under challenge is infirm and hence it has got to be set aside on the grounds urged by the learned Counsel for the petitioner.

7. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority, the detenu was ordered to be detained under the Tamil Nadu Act 14/1982 branding him as a "Goonda" on the ground that he was involved in four adverse cases and in one ground case as referred to above. Insofar as the ground case in Crime No. 378/2009, which was registered by Aralvoimozhi Police Station, is concerned, the detenu moved a bail application before the Judicial Magistrate, Boothapandi, and the same was dismissed on 26.11.2009. It is also an admitted fact that no bail application was filed or pending before any court of criminal law at the time when the detention order came to be passed. But, however, the detaining authority in paragraph No. 4 of the grounds of detention has observed as follows:

4. I am aware that Thiru John @ Jagan was arrested on 28.10.2008 and duly produced before the Judicial Magistrate, Boothapandy on the same day and remanded upto 11.11.2009 and lodged at District Jail, Nagercoil. His remand period has been extended upto 23.12.2009. I am also aware that he is in remand in the ground case in Aralvoimozhy P.S. Cr. No. 378/2009 and the bail application moved on his behalf in CrI.M.P. No. 7243/2009 before the court of Judicial Magistrate, Boothapandy, was dismissed on 26.11.2009. But there is a real possibility of his coming out on bail by filing a bail application before the same or higher court and if he comes out on bail in future, he will indulge in such activities which would be prejudicial to the maintenance of public peace and public order....

8. A reading of the above observation would clearly indicate that the said subjective satisfaction could not have been arrived at proper, since no bail application was filed or pending in the ground case, after the dismissal of the earlier bail application on 26.11.2009, when the detention order came to be passed on 10.12.2009 and, therefore, the subjective satisfaction recorded by the detaining authority that there was a real possibility of the detenu coming out on bail was not based on any material, much less cogent material which law would required in a stated circumstance, which is indicative of the fact that there was non-application of mind on the part of the detaining authority as to the possibility of the detenu coming out on bail and indulging in future activities which would be prejudicial to the maintenance of public order and further he could not have arrived at the subjective satisfaction proper, which, in the considered opinion of the court, would vitiate the order of detention.

9. Added further, a reading of the arrest memo would indicate that the factum of arrest of the detenu in connection with the ground case crime No. 378/2009 was

informed to the relative of the detainee only on 28.11.2009 but, actually he was arrested on 28.10.2009. If to be so, there is a discrepancy in the material particular as to the date of arrest and also as to the date when intimation was given to the relative and in such circumstances the detaining authority should have called for a clarification but, he has failed to do so. Added further, column No. 12 of the same arrest memo states that it was an intimation given to the relative not only as to the arrest of the detainee in the ground case Crime No. 378/2009 but also regarding the preventive detention of the detainee, which indicates the pre-determined mind of the sponsoring authority in detaining the detainee under the preventive detention. On this ground also, the impugned order of detention is liable to be quashed.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in P.D. No. 56/2009, dated 10.12.2009, passed by the 2nd respondent is quashed. The detainee John @ Jegan, S/o. John Rose, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.