

(2010) 06 MAD CK 0202

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 64 of 2010

Ravi @ Ravikumar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 294, 302, 307

Citation : (2010) 06 MAD CK 0202

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

Bench : Division Bench

Advocate : R. Alagumani, 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 08.01.2010, whereby the petitioner by name Ravi @ Ravikumar 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. Srivilliputtur
Town PS Crime No. 121/07 Under Sections 147, 148, 307, 302 IPC -----

and also in the ground case in Crime No. 805/2009, registered under Sections 341, 294(b), 307 IPC on the file of Rajapalayam Police Station for a crime that had taken place on 30.12.2009, in which he was arrested on the next 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 main ground raised by the learned Counsel is that the detenu has not moved any bail application in the ground case Crime No. 805 of 2009 but, the detaining authority in paragraph No. 5 of the grounds of detention has recorded his subjective 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 at all, much less cogent material under such circumstances it would be indicative of the fact that there was non-application of mind on the part of the detaining Authority and on this ground the detention order is liable to be quashed.

5. The Court heard the learned Additional Public Prosecutor for the State on the above contention 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 main ground 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. The relevant portion in paragraph No. 5 of the grounds of detention reads as follows:

5. I am aware that Thiru. Ravi @ Ravikumar, has been remanded to Judicial custody upto 12.01.2010 in Virudhunagar District Jail in connection with Rajapalayam North Police Station Cr. No. 805/2009. He has not moved bail application in this case. In the adverse case against him in Srivilliputhur Town Police Station Cr. No. 121/07 u/s 147, 148, 307 and 302 IPC, the Judicial Magistrate-II, Srivilliputhur has granted bail vide Cr.M.P. No. 2206/07, dated 07.05.2007. The ground case is also registered against him u/s 341, 294(b) and

307 IPC. Therefore there is a real possibility of his coming out on bail in the ground case, by filing a bail application before the concerned court or higher court....

8. From the reading of the above, it is quite clear that bail application was not moved by the detenu in the ground case Crime No. 805/2009 and he was in judicial custody. But, the detaining authority has stated that there was a real possibility of the detenu coming out on bail by filing application. 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 and it was only apprehension in the mind of the detaining authority. Law would require not only material but cogent material to record such a satisfaction, which is lacking in the instant case. When no bail application was pending before any court of criminal law on the date when the detention order came to be passed, the subjective satisfaction recorded by the detaining authority that there was a real possibility of the detenu coming out on bail shows non-application of mind on the part of the detaining authority. Under such circumstances, the order impugned in the present petition has got to be set aside.

9. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in Cr.M.P. No. 02/2010, dated 08.01.2010, passed by the 2nd respondent is quashed. The petitioner/detenu Ravi @ Ravikumar, S/o. Balakrishnasamy, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.