
(2010) 08 MAD CK 0239
In the Madras High Court
Case No : H.C.P. No. 695 of 2010

S. Kalaivani

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120, 147, 148, 294, 302

Citation : (2010) 08 MAD CK 0239

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

Bench : Division Bench

Advocate : M. Palanivel, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—The petitioner is the wife of the detenu D. Thaveethu @ Thennavan. She challenges an order of the second respondent made in BDFGISSV No. 17/2010 dated 4.4.2010, whereby her husband was ordered to be detained under Act 14/82 branding him as a Goonda.

2. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor for the State. The Court also looked into the materials available including the grounds of detention.

3. Pursuant to the recommendations made by the sponsoring authority that the detenu is involved in three adverse cases namely (1) Mamallapuram PS Cr. No. 192/2009 under Sections 147, 148, 120(b), 302 IPC r/w 3 & 4 of Indian Explosive Substances Act; (2) Chunambedu PS Cr. No. 59/2010 under Sections 147, 148, 341 and 302 IPC and (3) Chunambedu PS Cr. No. 60/2010 under Sections 147, 148, 294(b), 394, 307 IPC r/w 3 of Indian Explosive Substances Act and also in one ground case registered by Chunambedu PS Cr. No. 154/2010 under Sections 147, 148, 294(b), 341, 394, 307 IPC r/w 4 of Indian Explosive

Substances Act, 1908 for an occurrence that took place on 17.2.2010, and he was arrested on 1.3.2010 and remanded to judicial custody, the detaining authority after scrutiny of the materials placed, formed an opinion that the detenu should be detained under Act 14/82 and hence passed the order which is under challenge.

4. The learned Counsel while assailing the order under challenge, put forth only one ground. According to him, the authority before stating that the detenu would indulge in such activities in future, has not even formed an opinion that he was likely to come out on bail, or there was a real possibility or imminent possibility of his coming out on bail, and this shows the non-application of mind on the part of the authority, and hence, the order has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above contention and paid its anxious consideration on the submissions made.

6. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was involved in three adverse cases and one ground case as referred to above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, has made the order of detention which is the subject matter of challenge before this Court. It is seen from the impugned order that the detaining authority before stating that he would indulge in such activities in future, has not even formed an opinion that he was likely to come out on bail, or there was a real possibility or imminent possibility of his coming out on bail. Even without assessing the same, the authority has stated that there was a compelling necessity to detain him under the provisions of Act 14/82. This, in the considered opinion of the Court, would suffice to set aside the order since it would be indicative of the non-application of mind on the part of the authority. It would be more apt and appropriate to reproduce the relevant paragraphs of the Full Bench decision of this Court reported in 2007(5) CTC 657 (*Kalaiselvi v. The State of Tamil Nadu*) as follows:

24. From the reading of the aforesaid decisions, it is clear that the conclusion of the Detaining Authority that there is imminent possibility of the detenu being released on bail must be based on cogent materials and not on the mere ipse dixit of the Detaining Authority. As has been observed by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of offence, the stage of the investigation, the availability of statutory bail as envisaged u/s 167(2), Proviso of Cr.P.C. Even though it is not possible not desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during pendency of the investigation when there is allegation of commission of serious offence, such as punishable u/s 302 or Section 395 IPC. On the other hand, it is also safe to conclude that in offences relating to prohibition laws or white collar offences, the Courts usually grant bail notwithstanding the fact that investigation may be still going on. Similarly, when a

charge-sheet is not filed within the statutory period contemplated, notwithstanding the seriousness of the allegation, on the expiry of the period, the accused got a right to be released on bail.

25. In the present case, the conclusion of the Detaining Authority, as already been extracted. We have searched for the materials on record in support of such conclusion and we find none. There was no imminent possibility of the detenu obtaining statutory bail as hardly 60 days had elapsed from the date of the arrest and the investigating agency had more than a month for completion of the investigation. The alleged offence u/s 302, IPC cannot be characterised as an offence of routine nature which would prompt any Court to grant bail even before completion of investigation. Top of it, the Bail Application had in fact been rejected by the Sessions Judge and no other Bail Application was pending. In such a factual situation, in our considered opinion, the decision of the Supreme Court in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , is squarely applicable and it can be said that the conclusion of the Detaining Authority is mere ipse dixit and there is hardly any material in support of such conclusion. On this score also, the detention order is liable to be quashed.

7. Under the stated circumstances, this Court is of the view that the order of detention has got to be set aside.

8. In the result, this habeas corpus petition is allowed setting aside the order of the second respondent, and the detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.