

(2014) 04 MAD CK 0123
In the Madras High Court
Case No : H.C.P. No. 2382 of 2013

Selvi	Vs	APPELLANT
The State of Tamil Nadu		RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 336, 341, 379, 397

Citation : (2014) 04 MAD CK 0123

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner, who is the mother of the detenu, is before this Court challenging the proceedings in No. 1030/2013 dated 17.09.2013 on the file of the 2nd respondent and for a direction to the respondents to set the detenu at liberty from detention.

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

S.No.

Police Station and Crime No.

Sections of Law

1

J-9, Thuraipakkam Police Station Crime No. 1040/2006

380 IPC

2

T-15 SRMC Police Station Crime No. 988/2013

379 IPC

3

T-15 SRMC Police Station Crime No. 1001/2013

379 IPC

4

T-15 SRMC Police Station Crime No. 1086/2013

341, 392, 506(ii) IPC

5

T-15 SRMC Police Station Crime No. 1098/2013

341, 392, 506(ii) IPC

The ground case alleged against the detenu is one registered on 27.08.2013 by the Inspector of Police, T-15 SRMC Police Station in Crime No. 1102/2013 for offences under Sections 341, 294(b), 336, 427, 397 and 506(ii) IPC.

3. Though several grounds have been raised by the learned counsel for the petitioner, he focussed his arguments on the question of non-application of mind on the part of the detaining authority, while considering the similar case in Crime No. 1677 of 2012 and the bail granted in CrI.M.P.No.8172 of 2012. According to him, the detaining authority, in the detention order has stated that in a case similar case registered u/s 379 IPC, the learned Judicial Magistrate No. II, Poonamallee granted bail for T-6 Avadi Police Station Crime No. 1677/2012 in CrI.M.P.No.8172/2012, whereas in the material document furnished to the detenu, it has been informed that the learned Magistrate while considering the bail application in respect of that accused, considering the fact that as against him there were two cases, and he was in remand for more than 31 days, had granted bail, whereas in the instant case, there are 5 adverse cases and hence the case cited is not similar in nature. Therefore, the impugned detention order is vitiated in law.

4. We have heard Mr. P.Govindarajan, learned Additional Public Prosecutor on the above point and perused the records.

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

4.... Similarly, in a case registered u/s 379 IPC, the learned Judicial Magistrate No. II, Poonamallee granted bail for T-6, Avadi Police Station Crime No. 1677/2012 in CrI.M.P.No.8172/2012. Hence, I infer that it is very likely of his coming out on bail in T-15, SRMC Police Station Cr.Nos.988/2013, 1001/2013, 1086/2013, 1098/2013 and 1102/2013 since in a similar placed cases, bails are granted by the Court after lapse of time. 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. On scrutiny of the above, it could be seen that the detaining authority relied on a similar case registered u/s 379 IPC, wherein the learned Judicial Magistrate No. II, Poonamallee granted bail in Crime No. 1677 of 2012 in CrI.M.P.No.8172 of 2012 to that accused and therefore, he inferred that it is very likely of the detenu coming out on bail, since in a similar placed cases, bails are granted by the Court after lapse of time and arrived at the subjective satisfaction. However, a perusal of the booklet at page 126, would show that the learned Magistrate while considering the bail application in respect of that accused, considered the fact that as against him there were two adverse cases and he was in remand for more than 31 days had granted bail, whereas in the instant case, there are 5 adverse cases and therefore there is possibility of granting bail in these cases, quoting that similar case is not feasible. Such being the position, the similar case which was taken into account by the detaining authority for arriving at the subjective satisfaction that detenu may come out on bail and indulge in such activities prejudicial to the interest of the public order is definitely not similar in nature. It clearly shows of non-application of mind on the part of the detaining authority. Hence, on this ground alone, the impugned detention order is liable to be set aside.

7. Accordingly, the impugned detention order passed by the second respondent in No. 1030/2013 dated 17.09.2013, is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Rajesh in this case is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case. However, this order shall not preclude the prosecution from conducting cases effectively and shall not confer any right to the detenu before the Regular Court.