

**(2014) 06 MAD CK 0260**  
**In the Madras High Court**  
**Case No : H.C.P. No. 2220 of 2013**

Sivakumar

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

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**Date of Decision :** 02-06-2014

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 294(b), 302, 307, 336, 341

**Citation :** (2014) 06 MAD CK 0260

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

**Bench :** Division Bench

**Final Decision :** Allowed

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**Judgement**

V. Dhanapalan, J.—The petitioner is the father of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in No. 766/BDFGISSV/2013 dated 22.08.2013.

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

Sl.No.

Police Station and Crime No.

Sections of Law

1

K3 Aminjikarai Police Station Crime No.696/2013

302 IPC

2

K8 Arumbakkam Police Station Crime No.1222/2013

384 & 506(ii) IPC

K4 Anna Nagar Police Station Crime No.1566/2013

392 IPC

The ground case alleged against the detenu is one registered on 19.07.2013 by the Inspector of Police, K3 Aminjikarai Police Station in Crime No. 1596/2013 for the offences under Sections 294(b), 336, 427, 307 and 506(ii) IPC.

3. Besides several grounds to assail the order of detention, learned counsel for the petitioner would contend that in the detention order, in the similar case relied on by the detaining authority in Crime No. 1640/2011, bail was granted to the accused therein by the Court of Principal Sessions, Chennai in Crl. M.P. No. 10992/2011 for the offences under Sections 294(b), 341, 336, 307, 397 and 506(ii) IPC; whereas, in the instant case, the detenu, in the first adverse case was involved in an grave offence u/s 302 IPC and in the ground case, he was involved in offences under Sections 336, 427, 307 & 506(ii) IPC. The offences for which the accused in the said similar case was arrested and remanded to judicial custody is entirely different from the present one and therefore, on this sole ground, the detention order is liable to be quashed.

4. We have heard the learned Additional Public Prosecutor on the above submission.

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

4....I am also aware that Thiru.Rathinam @ Rathinavel is in remand in K3 Aminjikarai Police Station in Cr. No. 1596.2013, he has moved a bail application for K3 Aminjikarai Police Station Cr. M.P. No. 8828/2013 and the same is dismissed on 29.07.2013. Again, he has moved a bail application for K3 Aminjikarai Police Station Cr. No. 1596/2013 before the Court of Principal Sessions, Chennai in Crl. M.P. No. 9867/2013 and the same is pending. In a similar case registered under Sections 294(b), 341, 336, 307, 397 and 506(ii) IPC at V-5 Thirumangalam Police Station Crime No. 1640/2011 bail was granted by the Court of Principal Sessions, Chennai in Crl. M.P. No. 10992/2011. Hence, I infer that it is very likely of his coming out on bail in K3 Aminjikarai Police Station in Crime No. 1596/2013, since in similar cases bails are granted by courts after a lapse of time....

6. On a reading of the detention order, it is seen that the detaining authority in paragraph 4 of the detention order, while placing reliance on a similar case registered under Sections 294(b), 341, 336, 307, 397 and 506(ii) IPC in Crime No. 1640/2011, wherein bail was granted to the accused therein vide Crl. M.P. No. 10992/2011 by the Court of Principal Sessions, Chennai, inferred that the detenu is likely to come out on bail in Crime No. 1596/2013. But, in the case on hand, the detenu, in the first adverse was involved in a grave offence u/s 302 IPC; offences in the second adverse case are under Sections 384 & 506(ii) IPC

and in the third adverse case, the offence is u/s 392 IPC; in the ground case, the detenu is involved for offences under Sections 294(b), 336, 427, 307 & 506(ii) IPC. A comparison of offences indicated in the similar case with that of the present one makes it clear that both cases cannot be construed as similar in nature. Moreover, the offence which the detenu was involved in the first adverse case is u/s 302 IPC, which is grave in nature and there is no possibility of granting bail to the detenu in that matter. Therefore, it is clear that there is improper application of mind on the part of the detaining authority in treating the offences as similar to that of one relied on by them. Thus, for the reasons stated hereinabove, the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu Rathinam @ Rathinavel made in No. 766/BDFGISSV/2013 dated 22.08.2013 is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

8. However, it is made clear that this order shall not preclude the authorities concerned to effectively contest the matter before the Regular Court, uninfluenced by the above order. It is also made clear that this order shall not confer any right or advantage whatsoever to the detenu to claim anything before the Regular Court.