

(2010) 07 MAD CK 0135

In the Madras High Court

Case No : Habeas Corpus Petition No. 433 of 2010

Smt. Jayalakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2)

Citation : (2010) 07 MAD CK 0135

Hon'ble Judges : P.R. Shivakumar, J;C. Nagappan, J

Bench : Division Bench

Advocate : P.K. Ilavarasan, for P. Anandan and Satheesh, for the Appellant;
Hasan Md. Jinnah, Additional Public Prosecutor, for the Respondent

Judgement

C. Nagappan, J.—The wife of the detenu Madhavan is the petitioner in this Habeas Corpus Petition and she has challenged the order of

detention passed by the second respondent, in No. 9/BDFGISSV/2010 dated 29.01.2010.

2. On the recommendation made by the Sponsoring Authority citing nine adverse cases in Crime No. 82/2009, V-1, Villivakkam Police Station,

Crime No. 273/2009, T-9, Pattabhiram Police Station, Crime No. 449/2009, S-8, Adambakkam Police Station, Crime No. 550/2009, S-8,

Adambakkam Police Station, Crime No. 821/2009, S-7, Madipakkam Police Station, Crime No. 823/2009, S-7, Madipakkam Police Station,

Crime No. 519/2009, T-11, Thiruninravur Police Station, Crime No. 524/2009, T-11, Thiruninravur Police Station, Crime No. 584/2009, T-11,

Thiruninravur Police Station and the ground case in Crime No. 16/2010, T-11, Thiruninravur Police Station, and after looking into the materials

available, the second respondent, the Commissioner of Police, Chennai City Sub-

urban Area, St. Thomas Mount, Chennai-600 016, formed an opinion that the detenu Madhavan was to be termed as GOONDA since his activities are prejudicial to the maintenance of public order as contemplated u/s 2(1)(f) of the Tamil Nadu Act 14 of 1982 and in order to prevent him from indulging in such activities in future, the Order of detention, dated 29.01.2010, was passed. The said Order is under challenge in this petition.

3. The order of detention is challenged on various grounds. The main submission of the learned Counsel for the petitioner is that the detaining authority, in paragraph No. 3 of the grounds of detention, has observed that the detenu was arrested on 10.01.2010 and produced before the Judicial Magistrate-II, Thiruvallur on 11.01.2010 and remanded till 25.01.2010 in the ground case viz. Crime No. 16/2010 and his remand period was further extended up to 08.02.2010; that and the said observation with regard to the extension of remand in the ground case is not supported by material and that hence the order of detention is vitiated.

4. The learned Additional Public Prosecutor submits that the order remanding the detenu in the ground case was made on 11.01.2010 and a copy of the same has been supplied to the detenu; that on 25.01.2010, the detenu/accused was not produced in the said case and the Judicial Magistrate-II, Thiruvallur, passed an order recording the non-production of the accused and directing the authorities to produce him on 08.02.2010; that a copy of the said order is found in page No. 181 of the booklet and that based on the said order, the observation regarding extension of remand in the ground case has been made.

5. There is no controversy with regard to the date of arrest of the detenu in the ground case in Crime No. 16/2010 and his initial remand on 11.01.2010 for the period upto 25.01.2010. The contention of the learned Counsel for the petitioner is that the observation in the grounds of detention that the remand was extended till 08.02.2010 is not supported by material. The document to which our attention was drawn by the Additional Public Prosecutor as the material for the said observation, is found in page No. 181 of the booklet and the same is sought to be interpreted as an order extending the remand of the detenu. The order dated 25.01.2010 passed by the Judicial Magistrate-II, Thiruvallur, reads

as follows:

Accused not produced. Inform authorities to produce the accused on 8.2.2010.

The above order is not one extending the remand of the detenu. The detaining authority has wrongly construed the above order as one extending

the remand of the detenu up to 08.02.2010. Had the detaining authority applied its mind, it would have observed that the accused was not

produced, but, however, he was directed to be produced on 08.02.2010. Failure to do so, shows non-application of mind on the part of the

detaining authority, which vitiates the order of detention and on that ground alone the order of detention is liable to be set aside.

6. Before parting with the case, we would like to observe that we noticed orders similar to the order dated 25.01.2010 in the present case, passed

by the learned Judicial Magistrates on the jail warrants when the accused were not produced before the Judicial Magistrate for extension of

remand. Time and again, it is reiterated that the Judicial Magistrates should not pass orders of remand without the production of the accused, either

in person or through video conferencing.

7. Section 167 Cr.P.C. which deals with the remand of the accused and extension of remand contains a proviso to the effect that no Magistrate

shall authorise detention of an accused person, if the accused is in police custody unless the accused is physically produced before him and if the

accused is detained other than in the custody of police unless the accused is produced before him either in person or through the media of

electronic linkage. For the purpose of better appreciation, the proviso (b) to Sub-section (2) of Section 167 Cr.P.C. as amended by the Central

Act 5/2009 reads as follows:

(b) no magistrate shall authorise detention of an accused in custody of the police under this section unless the accused is produced before him in

person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further

detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

Thus it is made clear that for the first remand after arrest, physical production of the accused before the Magistrate is necessary and for subsequent

remands, namely remand extensions, the accused may be produced before the

Magistrate, either in person or through the media of electronic

linkage. Even prior to the amendment, the un-amended proviso (b) also provided such a condition for the remand or remand extension. No order

of remand or remand extension should be made without such production indicated supra. Time and again repeated instructions have been issued in

the form of judicial orders as well as administrative directions regarding the production of the accused for remand and remand extension. Despite

such instructions, we come across instances of such orders being passed, by the Judicial Magistrates either extending the remand or directing the

accused to be produced on a future date without seeing the accused. We emphasize the point that the learned Judicial Magistrates shall not pass

any order on the application seeking for extension of remand without the production of the accused either in person or through video conferencing.

In the event of any deviation coming to our notice, it will be viewed seriously leading to action being taken.

8. We are forced to make the observation out of anguish, in the light of the fact that we have come across a number of such instances in the recent

past. The Registry is directed to circulate a copy of this order to all the lower courts in Tamil Nadu and Puducherry, after obtaining order from My

Lord, The Hon''ble Chief Justice.

9. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention, dated 29.01.2010, passed by the second respondent

is set aside. The detenu Madhavan, son of T. Govindaraj is ordered to be set at liberty forthwith, unless his continued custody is required in

connection with any other case.