
(2010) 08 MAD CK 0238
In the Madras High Court
Case No : H.C.P. No. 696 of 2010

Sudarvizhi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 294, 302, 336

Citation : (2010) 08 MAD CK 0238

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

Bench : Division Bench

Advocate : V. Arul, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition is brought forth by the wife of the detenu challenging the order of the second respondent in B.D.F.G.I.S.S.V. No. 52/2010 dated 27.3.2010, whereby the detenu Manikandan @ Chinna appu was ordered to be detained as a Goonda under the provisions of the Act 14 of 1982.

2. The Court heard the learned Counsel appearing for the petitioner and looked into the materials available on record, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendation made by the Sponsoring Authority that the detenu is involved in two adverse cases viz. (i) S-8 Adambakkam Police Station Crime No. 537 of 2008 for the offences under Sections 353, 294(b), 506(ii) of the Indian Penal Code and (ii) S-8 Adambakkam Police Station Crime No. 141 of 2010 for the offences under Sections 147, 148, 448, 427, 302 of the Indian Penal Code and the ground case in Crime No. 142 of 2010 registered by S-8, Adambakkam Police Station for the offences under Sections 341, 392, 336, 506(ii) of the Indian Penal Code for the incident that had taken place on 28.02.2010 and the detenu surrendered before the Judicial Magistrate No. II, Chengalpattu on 02.03.2010, the Detaining Authority, on

scrutiny of materials placed by the Sponsoring Authority and after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, passed the detention order, which is the subject matter of challenge before this Court.

4. Advancing arguments on behalf of the petitioner, learned Counsel raised two points, which, according to him, would suffice to set aside the detention order. According to the learned Counsel, the detenu filed bail applications in respect of Crime Nos. 141 and 142 of 2010 before the District Sessions Judge, Chengalpattu in CrI.M.P. Nos. 960 and 1050 of 2010 and the same were dismissed on 17.3.2010 and 25.3.2010 respectively and thereafter no bail application was filed. In the order of detention, the Detaining Authority has observed that there was a real possibility of the detenu coming out on bail, which is without any material or cogent material.

5. Learned Counsel added further that the special report found in page No. 220 of the booklet placed before the Detaining Authority did not contain the date when it was actually submitted by the Sponsoring Authority. On these grounds, the detention order has got to be set aside.

6. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

7. As could be seen from the available materials, the Detaining Authority has made the order of detention terming the detenu as a Goonda, on the strength of the materials placed before him pertaining to two adverse cases and one ground case as referred to above, and after arrived at a subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order. It is an admitted position that bail applications were filed in respect of Crime Nos. 141 and 142 of 2010 before the District Sessions Judge, Chengalpattu in CrI.M.P. Nos. 960 and 1050 of 2010 and the same were dismissed on 17.3.2010 and 25.3.2010 respectively and when the detention order was passed on 27.3.2010, no bail application was pending before any criminal Court. It is pertinent to point out that Crime No. 141 of 2010 was registered for murder. In a case of murder, ordinarily before the completion of investigation, bail will not be granted by the Court of Sessions or by this Court in favour of the accused. While the matter stood thus, the Detaining Authority has observed in its order as follows:

I am aware that Thiru. Manikandan @ Chinna Appu is in remand in S-8, Adambakkam Police Station Crime Nos. 141/2010 & 142/2010. He has filed a bail petition before District Sessions Judge, Chengalpattu in S-8, Adambakkam P.S. Cr. No. 141/2010 vide CrI.M.P. No. 960/2010 and the same was dismissed on 17.03.2010. Further, he has filed a bail petition before District Sessions Judge, Chengalpattu in S-8, Adambakkam P.S. Cr. No. 142/2010 vide CrI. M.P. No. 1050/2010 and the same was dismissed on 25.03.2010. I am also aware that there is real possibility of him coming out on bail for the above cases by filing another bail application before the Court of Sessions or Hon''ble High Court, since

in similar cases bails are granted by the above Courts after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that that the said Thiru . Manikandan @ Chinna Appu is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.

8. From the above, it would be quite clear that when the detention order was passed by the Detaining Authority, no bail application was pending, but the Authority has observed that there was a real possibility of the detenu coming out on bail. It is only an expression of the impression in the mind of the Authority and only an inference and that too without any basis or materials much less cogent materials as the law would require.

9. Apart from this, as rightly pointed out by the learned Counsel appearing for the petitioner, a perusal of the document found in page No. 220 of the booklet, which is a special report, did not contain the date when it was actually placed before the Detaining authority. The special report submitted by the Sponsoring Authority was prior to the passing of the detention order or subsequent to the passing of the detention order remains unknown. In this regard, the Detaining Authority should have called for clarification from the sponsoring authority, but not done so. On these two grounds, the order of detention has got to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in B.D.F.G.I.S.S.V. No. 52/2010 dated 27.3.2010. The detenu Manikandan, @ Chinna Appu, who is now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.