

(2014) 07 MAD CK 0073
In the Madras High Court
Case No : H.C.P. No. 40/2014

Sujan Sundari

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 294[b], 302, 336, 341, 379

Citation : (2014) 07 MAD CK 0073

Hon'ble Judges : S. Rajendran, J;P.N. Prakash, J

Bench : Division Bench

Judgement

S. Rajeswaran, J.—Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.1820/BDFGISSV/2013 dated 06.12.2013, whereby the husband of the petitioner, viz., Pushparaj, S/o.Arokiasamy, aged 40 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a _GOONDA_.

2. As per the grounds of detention dated 06.12.2013, passed by the second respondent, the detainee came to adverse notice in the following cases:

i)Adverse Cases:-

Sl No.

Name of the Police station and Crime No.

Section of law

1

Thiruvallur Town PS Cr.No.293/2006

379 IPC

2

ManavalaNagar PS Cr.No.201/2012

457, 380 IPC

3

Mappedu PS Cr.NO.256/2012

457, 380 IPC

4

Mappedu PS Cr.No.276/2012

302 IPC

5

Thirutani PS Cr.No.970/2012

449, 302, 392 r/w 397 IPC

6

T12 Poonamallee PS Cr.No.

341, 392 IPC

ii)Ground Case:

Sl No.

Name of the Police station and Crime No.

Section of law

1

T16 Nazarathpet Police Station Cr.No.969/2013

341, 294[b], 336, 427, 392 and 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.A.Sirajudeen, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, though the detenu has been in remand in the ground case in Cr.No.969/2013 registered by T16 Nazarathpet Police Station and that the bail application filed by him in the said ground case was pending before the learned Judicial Magistrate No. I, Poonamallee, Chennai in CrI.MP.No.6129/2013, nothing has been stated by the Detaining Authority about the detenu being arrested and remanded in the adverse cases, particularly the 5th adverse case, wherein the detenu has been

arrested and remanded to judicial custody and the Remand Report in respect of the said 5th adverse case has been annexed in page No.38 of the Booklet furnished to the detenu. He adds that the Detaining Authority has not stated whether the detenu on his relative has moved any bail application or not in the said case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the ground case is a mere ipse dixit without any cogent materials.

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. We have heard the learned counsel for both sides with regard to the facts and citation.

7. At the outset, it is to be stated that from a perusal of the grounds of detention, particularly, paragraph 4 of the grounds, the detenu is in remand in the ground case in Cr.No.969/2013 and the bail application filed by him was pending on the file of the learned Judicial Magistrate No.1, Poonamallee in CrI.MP.No.6129/2013 as on the date of passing of the Detention Order. But, as evidenced from the Remand Report furnished in the Booklet [page No.38], the detenu is in remand in the 5th adverse case [Cr.No.970/2012] for the offences u/. 449, 302, 392 r/w 397 IPC and the Detaining Authority has not stated in the Grounds of Detention whether the detenu is in remand in the 5th adverse case and whether he has filed any bail petition or not. Moreover, in para 4 of the Grounds of Detention, the case which has been registered for lesser offences, viz., the ground case, has been taken into consideration for detaining the detenu under the Tamil Nadu act 14 of 1982 while the case which has been registered for graver offence of theft and murder, i.e., the 5th adverse case, has not been taken note of by the Detaining Authority, which is indicative of total non-application of mind on the part of the Detaining Authority and the same vitiates the order of detention and the said Detention Order cannot be sustained in the eye of law and the same is liable to be set aside.

8. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in Memo No.1820/BDFGISSV/2013 dated 06.12.2013 passed by the second respondent is set aside. The detenue, viz., Pushparaj, S/o.Arokiasamy, aged 40 years, is directed to be released forthwith unless his presence is required in connection with any other case.