
(2015) 09 MAD CK 0299
In the Madras High Court
Case No : H.C.P. No. 1338 of 2015

Sumathi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Penal Code, 1860 (IPC) — Section 323, 336, 341, 392, 397

Citation : (2015) 09 MAD CK 0299

Hon'ble Judges : S. Tamilvanan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : Ilayaraja Kandasamy, for the Appellant; M. Maharaja, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J—Petitioner is the aunt of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No. 384 of 2015 dated 09.05.2015.

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

The alleged ground case has been registered against the detenu on 10.04.2015 by the N-2 Kasimedu Police Station, in Crime No. 611 of 2015 for offences under Sections 341, 323, 336, 427, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, learned counsel for petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application in the similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

4. Per contra, learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the copy of the bail application in the similar case, referred to in the grounds of detention was not supplied to the detenu.

5. We have given our careful and anxious consideration to the rival submissions put forward by learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

6. It is seen from paragraph 4 of the Grounds of Detention that in similar case, viz., the accused was released on bail by this Court in CrI.O.P. No.4371 of 2013 in respect of the case in Cr.No.981 of 2013 for the offences u/s.341, 336, 427, 392 r/w 397 and 506(ii) IPC, on the file of B-2, Esplanade Police Station. On a perusal of the Booklet furnished by the Prosecution, it is seen that it does not contain the copy of the said bail application in similar case; but the bail order of the said similar case [both in English version and in vernacular version] has been furnished in page Nos. 170 to 172 of the Booklet. The said bail application filed in similar case was the document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such document has not been supplied to the detenu, as it did not form part of the Booklet furnished by the Prosecution. Therefore, non supply of the copy of the bail application and other documents in similar case to the detenu would vitiate the impugned detention order.

7. The Honourable Supreme Court in *M. Ahamedkutty Vs. Union of India (UOI) and Another*, (1990) 47 ELT 188 : (1990) 1 JT 143 : (1990) 2 SCC 1 : (1990) 1 SCR 209 has observed thus:-

"7. Considering the facts in the instant case, the bail applications and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

(Emphasis added)."

8. This Court in *Jarinabegam Vs. The State of Tamil Nadu*, (2007) 1 LW(Cri) 276 relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of the copy of the bail applications in similar cases to the detenu has the effect of vitiating the order of detention.

9. As already analysed by us, in the facts and circumstances of the present case, non-supply of the documents, viz., bail applications, in similar cases, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital documents, the detenu has lost valuable right to make an effective representation to the authorities concerned.

10. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

Accordingly, the impugned detention order passed by second respondent, detaining the detenu, namely, Prem @ Prem Kumar, S/o. Moorthy, aged about 23 years, made in BCDFGISSSV No. 384 of 2015 dated 09.05.2015, 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.