

(2014) 06 MAD CK 0172
In the Madras High Court
Case No : H.C.P. No. 2233 of 2013

Sundari

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Penal Code, 1860 (IPC) — Section 146, 147, 201, 294(b), 302

Citation : (2014) 06 MAD CK 0172

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the wife of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in No. 982/BDFGISSV/2013 dated 13.09.2013.

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

Sl.No

Police Station and Crime No.

Sections of Law

1

S5 Pallavaram Police Station, Crime No. 3998/2012

147, 363 IPC @ 147, 146, 363, 302 r/w 34 IPC and 302 r/w 201 IPC

2

S5 Pallavaram Police Station Crime No. 298/2013

294(b), 384 & 506(ii) IPC

3

S5 Pallavaram Police Station, Crime No. 381/2013

341, 294(b), 392 r/w 397, 427, 336 & 506(ii) IPC

4

K8 Arumbakkam Police Station Crime No. 1612/2013

384 & 506(i) IPC

The ground case alleged against the detenu is one registered on 10.09.2013 by the Inspector of Police, Law & Order, K3 Aminjikarai Police Station in Crime No. 1959/2013 for the offences under Sections 294(b), 336, 427, 324, 397 and 506(ii) IPC.

3. Besides several grounds to assail the order of detention, learned counsel for the petitioner focussed his arguments on the ground that though the detaining authority arrived at the subjective satisfaction that there is a likelihood of the detenu coming out on bail in respect of Crime No. 1959/2013 by filing bail application before the appropriate court, there is no cogent material to support the decision of the detaining authority 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....The sponsoring authority has stated that the relatives of Thiru. Aasai @ Rajesh Kumar is taking action to take him out on bail by filing bail application for K3 Aminjikarai Police Station in Crime No. 1959/2013 before the appropriate court....

6. A reading of the detention order shows that the detaining authority has arrived at a subjective satisfaction that the relatives of the detenu are taking action to bail out the detenu in Crime No. 1959/2013 by filing bail application before the appropriate court. It is true that the detaining authority is empowered to take a decision if there is material to support the possibility of the detenu coming out on bail. But, on verification of the material documents, it is seen that no cogent material is available to support the decision of the detaining authority. The same, which amounts to infringement of right ensured under Article 22(5) of the Constitution of India, vitiates the order of detention. Thus, for the reason stated hereinabove, the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu Aasai @ Rajesh Kumar made in No. 982/BDFGISSV/2013 dated 13.09.2013 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.