
(2010) 08 MAD CK 0301
In the Madras High Court
Case No : H.C.P. No. 687 of 2010

Thoppammal

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 341
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(X)

Citation : (2010) 08 MAD CK 0301

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

Bench : Division Bench

Advocate : M. Sathish Kumar, for the Appellant; Babu Muthumeeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition is brought forth by the mother of the detenu challenging the order of the second respondent in M.H.S. Confdl. No. 29/2010 dated 26.3.2010, whereby the detenu Venkatesh Prabhu was ordered to be detained as "Goonda" under the provisions of the Act 14 of 1982.

2. Affidavit filed in support of the petition is perused. 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 one adverse case viz. Keelpakam Periyamedu Police station Cr. No. 97 of 2010 for the offences under Sections 147, 148, 341, 307, 302 of the Indian Penal Code and one ground case in Crime No. 42 of 2010 registered by Tirunelveli Taluk Police Station for the offences under Sections 147, 148, 420, 506(i) of the Indian Penal Code read with Section 3(1)(X) of the Scheduled Caste and Scheduled Tribes and Prevention of Atrocities Act, 1989 and Section 387 of the Indian Penal Code for the incident

that had taken place on 16.2.2010 and the detenu was arrested on 7.3.2010, the Detaining Authority, on scrutiny of materials available on record and after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, passed the order of detention, which is the subject matter of challenge before this Court.

4. Learned Counsel appearing for the petitioner has raised two points, which, according to him, are prime points, sufficient to set aside the order. According to the learned counsel, the detenu has not moved any bail application either in the adverse case or in the ground case. The Authority has also stated in the order under challenge that the detenu has not even filed a bail application. But the Authority has not observed that there is a real possibility or imminent possibility of detenu coming out on bail, but has pointed out that in order to restrain him from indulging in such activities which are prejudicial to the maintenance of public order, it became necessary to keep him in detention.

5. Learned Counsel would further add that if there was no possibility of the detenu coming out on bail and while he was in custody, no question of indulging in activities in future would arise, which would quite indicative of the fact of non-application of mind on the part of the 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. It is not in controversy that pursuant to the recommendation made by the sponsoring Authority that the detenu is involved in one adverse case and also the ground case referred to above, the Authority has made the order under challenge after arriving at subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order. After looking into the materials available on record, the Court has to necessarily set aside the order terming the same as infirm and defective since it is noticed that the Authority has not actually applied its mind and arrived at subjective satisfaction.

8. What are all stated is that the detenu should be restrained from indulging in such activities in future. At this juncture, it is pertinent to point out that the detenu has not moved any bail either in adverse cases or in the ground case. When the detenu was actually in custody, the question of real or imminent possibility of detenu coming out on bail does not arise. Without even recording the same, the Authority has observed that the detenu should be restrained from indulging in such activities which are prejudicial to the maintenance of public order, which would clearly indicate the fact of non application of mind.

9. A Full Bench of this Court had an occasion to consider such a situation in the decision reported in the case of *Kalaiselvi v. The State of Tamil Nadu* 2007 (5) CTC 657. In the said case, when the Authorities have not even stated whether the possibility is real or imminent or likely, the Full Bench was of the opinion that the detention order was vitiated. This Court is of the considered opinion that this

decision has got full application in the factual matrix of the case.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in M.H.S. Confdl. No. 29/2010 dated 26.3.2010. The detenu, namely, Venkatesh Prabhu, 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.