
(2010) 06 MAD CK 0235
In the Madras High Court
Case No : H.C.P. (MD) No. 181 of 2010

Vanadhevi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 294, 307, 323

Citation : (2010) 06 MAD CK 0235

Hon'ble Judges : M. Chockalingam, J;A. Arumugha Swamy, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of detention passed by the second respondent dated 27.02.2010 whereby the husband of the petitioner by name P. Mariappan was ordered to be detained under the 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, terming him as a "Goonda".

2. This Court heard the learned Counsel for the petitioner and looked into all the materials available, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was involved in six adverse cases, as detailed below,

Sl.No Police Station & Crime Number Provisions of law 1. Sivakasi East P.S. u/s 341 and 324 IPC Cr. No. 435 of 2007 2. Sivakasi East P.S. u/s 294(b), 323 and Cr. No. 735 of 2007 506(ii) IPC 3 Sivakasi East P.S. u/s 342 and 307 IPC Cr. No. 710 of 2008 4 Sivakasi East P.S. u/s 147, 148, 341, 294(b) and 506(ii) IPC. Cr. No. 110 of 2009 5 Sivakasi East P.S. u/s 387 and 506(ii) IPC Cr. No. 300 of 2009

6 Sivakasi East P.S. u/s 323, 324 and 506(ii) IPC Cr. No. 733 of 2009

and also in the ground case in Crime No. 137 of 2010 registered u/s 398 IPC on the file of Thiruthangal Police Station for an occurrence that had taken place on 22.02.2010, on scrutiny of the materials placed before the detaining authority, the 2nd respondent herein, after recording its subjective satisfaction that the alleged detenu was so acting in a manner prejudicial to the maintenance of public order, branded him as a "Goonda" and ordered him to be detained under the Tamil Nadu Act, 14 of 1982, which is the subject matter of challenge before the Court.

4. Advancing arguments on behalf of the petitioner, the learned Counsel would urge that inter alia the order of detention was made on 27.02.2010 and no bail application was filed by the detenu in the ground case after he was arrested on 27.02.2010 and while the matter stood thus, the Detaining Authority has pointed out in its order that there was a real possibility of the detenu coming out on bail and thus, the said observation was without any basis or material much less cogent material and under the circumstance, the order has become infirm.

5. Apart from the above, the learned Counsel would also mention two grounds, firstly, the period of detention is not mentioned and secondly, the order should have been placed before the Advisory Board with all materials within a period of 3 weeks therefrom, but actually it had not been done so.

6. The Court heard the learned Additional Public Prosecutor for the State on the above contentions put-forward by the counsel for the petitioner.

7. Insofar as the contentions 2 and 3 are concerned, the Court is unable to find any force, but the Court is able to find sufficient force in the first ground alleged by the learned Counsel for the petitioner.

8. It is true that the detenu was arrested on 22.02.2010 in connection with Crime No. 137 of 2010 registered by the Thiruthangal Police Station, as could be seen from the order under challenge. It is also an admitted position that the detenu has not made any application for bail before the Court of Criminal Law as of today. Paragraph-5 of the order under challenge reads as under:

I am aware that Thiru P. Mariappan has been remanded to judicial custody upto 08.03.2010 in District Jail, Virudhunagar in connection with Thiruthangal Police Station Cr. No. 137/2010. In the adverse cases registered against Thiru P. Mariappan, has granted bail by the concerned Court. In the case in Cr. No. 637/07 of Sivakasi East Police Station registered u/s 393 r/w 398 IPC, the accused has granted bail vide Cr.M.P.3140/07 dated 11.10.07 in the Court of Principle Sessions Judge, Virudhunagar at Srivilliputtur. The Ground case against Thiru P. Mariappan is also registered u/s 398 IPC. Therefore, there is real possibility of his coming out on bail in the ground case, by filing bail application before the concerned court or higher court. If he comes out on bail, he will again indulge in future activities which will be prejudicial to the maintenance of public

order and public peace.

9. Therefore, from a reading of the order of detention, it is quite clear that there is no reference that any bail application was actually made by the detenu insofar as the ground case is concerned. It is further brought to the notice of the Court that the detenu has not moved any bail application and in such circumstance, the observation made by the Detaining Authority that there was real possibility of the detenu coming out on bail is not only an apprehension which was in the mind of the Detaining Authority, it is without any basis or material much less cogent material, which the law requires to record so. The Detaining Authority has stated that in similar cases, bail was granted to the detenu, which in the considered opinion of this Court, would not suffice to take a decision in the instant case.

10. Under the circumstance, the order of detention passed by the Detaining Authority is infirm and it has got to be set aside. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in Cr.M.P. No. 10/2010 (GOONDA) dated 27.02.2010, passed by the second respondent is set aside. The detenu P. Mariappan, S/o Petchimuthu is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.