

(2014) 04 MAD CK 0101
In the Madras High Court
Case No : H.C.P. No. 2336 of 2013

Vanitha

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 307, 323, 336, 341

Citation : (2014) 04 MAD CK 0101

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the mother of the detenu and challenge is made to the order of detention dated 14.08.2013 made in Memo No. 692/BDFGISSV/2013 passed by the second respondent under which the detenu has been branded as a "Goonda" and detained under sub-section (1) of section 3 of the Tamilnadu 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) read with the order issued by the Government in G.O. (D) No. 120, Home, Prohibition and Excise (XVI) Department, dated 18.07.2013 under sub-section (2) of section 3 of the Tamil Nadu Act 14 of 1982.

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

Sl. No.

Police Station & Crime No.

Section of Law

1

P-1 Pulianthope Police Station Cr. No. 1300/2012

341, 385, 307, 336, 427 and 506(ii) IPC

2

P-1 Pulianthope Police Station Cr. No. 1336/2012

341, 307 and 506(ii) IPC

3

P-1 Pulianthope Police Station Cr. No. 1382/2012

341, 307, 385, 336, 427 and 506(ii) IPC

4

P-1 Pulianthope Police Station Cr. No. 492/2013

341, 294(b), 323, 385 and 506(ii) IPC

5

P-4 Bridge Police Station Cr. No. 577/2013

341, 294(b), 323, 385 and 506(ii) IPC

The ground case alleged against the detenu is one registered on 05.08.2013 at about 10.00 hours by the Inspector of Police, P-1 Pulianthope Police Station in Crime No. 1268/2013 for the offences under Sections 294(b), 341, 323, 392, 336, 427 and 506(ii) IPC r/w. 397 IPC.

3. It is seen that the detenu was arrested on 05.08.2013 at 14.15 hrs and is in remand. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court by way of this Habeas Corpus Petition.

4. The point urged by the learned counsel for the petitioner to assail the impugned order of detention is that the similar case considered by the detaining authority is not similar to the case in nature, as in the similar case, the petitioner is alleged to have committed robbery of Rs. 625/- and a cell phone from the de facto complainant, those properties have been recovered and the petitioner was in custody for more than 44 days; whereas in the present case all the adverse cases and ground case are under investigation. Therefore, placing reliance on the said similar case is vitiated in law.

5. We have heard Mr. P. Govindarajan, learned Additional Public Prosecutor appearing for the respondents on the above point and perused the materials available on record.

6. In the Detention Order, the Commissioner of Police, Chennai Police, Egmore, Chennai/2nd respondent herein has arrived at a suggestion as could be seen from paragraph 4, which is as follows:-

4. I am aware that Thiru. Sakthivel is in remand in P-1 Pulianthope P.S. Cr. Nos. 492/2013 and 1268/2013. He has filed a bail application for P-1 Pulianthope Police Station Cr. No. 1268/2013 before the Court of V Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No. 1620/2013 and the same is dismissed on 07.08.2013. He has filed a bail application for P-1 Pulianthope Police Station Crime No. 492/2013 before the Court of V Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No. 1619/2013 and bail was granted on 07.08.2013 and he is yet to offer sureties. The sponsoring authority has stated that the relatives of Thiru. Sakthivel are taking action to take him out on bail in P-1 Pulianthope P.S. Cr. No. 1268/2013 by filing another bail application before the appropriate court, it is pertinent to note that in a case registered at T-1 Ambattur Police Station Cr. No. 1960/2012 under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC bail was granted by the Court of Principal Sessions Judge at Thiruvallur in Crl. M.P. No. 2392/2012.

7. From the reading of the above, it could be seen that the detaining authority, relying on a case registered in T-1 Ambattur police station in Crime No. 1960 of 2012 for offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC, in which bail was granted by the Principal Sessions Judge at Thiruvallur in Crl. M.P. No. 2392 of 2012, came to the conclusion that there is a possibility of the detenu herein coming out on bail and indulge in such activities which are prejudicial to the maintenance of public order. A perusal of the bail order in Crl. M.P. No. 2392/2012 dated 30.10.2012 found in page 247 of the booklet would show that the petitioner therein is alleged to have committed robbery of Rs. 625/- and one cell phone from the de facto complainant; properties were recovered; petitioner was in custody for 44 days; material part of investigation was completed and considering the nature of the alleged offence and also the period of custody, the Principal Sessions Judge, Tiruvallur granted bail to the petitioner. Whereas in the instant case, investigation in the adverse cases as also in the ground case is pending and recovery is also not made. Such being the position, the said similar case cannot be treated as similar to the case on hand to arrive the subjective satisfaction to detain detenu. For this reason, the impugned detention order cannot be sustained and the same is liable to be set aside.

8. Accordingly, the impugned detention order passed by the second respondent in Memo No. 692/BDFGISSV/2013 dated 14.08.2013 is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Sakthivel in this case is set at liberty forthwith, unless his custody is required in connection with any other case.