
(2010) 06 MAD CK 0263

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 198 of 2010

Venkat @ Venkatachalam

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 307, 323, 324, 341

Citation : (2010) 06 MAD CK 0263

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

Bench : Division Bench

Advocate : C. Mayil Vahanarajendran, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the 2nd respondent, dated 20.01.2010, whereby the petitioner Venkat @ Venkatachalam, 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, branding him as a "Goonda".

2. The affidavit and the materials filed in support of the petition, in particular the order under challenge, are looked into. The Court heard the learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was to be detained under Tamil Nadu Act 14 of 1982, as he was involved in two adverse cases, as detailed below,

Sl. No. Police Station & Crime Number Provisions of law
1. Mukkudal Police Station Cr. No. 112/2008 Under Sections 294(b), 387, 506(ii) IPC
2. Veeravanallur Police Station Cr. No. 100/2009 Under Sections 341, 294(b), 324, 307, 506(ii) IPC
3. Vickiramasasingapuram Police Station Under Sections 294(b),

and also in the ground case in Crime No. 303/2009, registered under Sections 384, 307, 506(ii) IPC on the file of Kallidaikuruchi Police Station for a crime that had taken place on 27.12.2009, in which he was arrested on the very day and remanded to judicial custody, on scrutiny of the materials placed before him, the detaining authority, the 2nd respondent herein, after recording his subjective satisfaction that the activities of the alleged detenu were prejudicial to the maintenance of public order, branded him as a "Goonda" and ordered him to be detained under Tamil Nadu Act, 14 of 1982, which is the subject matter of challenge before the Court.

4. The only contention put-forward by the learned Counsel for the petitioner/detenu in assailing the order of detention is that there is no proper application of mind on the part of the detaining authority before recording its subjective satisfaction as to the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order. He would submit that in the instant case, though it is admitted that no bail application was moved by the detenu in the ground case before any court of criminal law on the date when the detention order came to be passed, the detaining authority has not even mentioned in the grounds of detention that there was an imminent or a real possibility of the detenu coming out on bail and even without recording so, the detaining authority has observed that to restrict him from indulging activities in future, which would be prejudicial to the maintenance of public order, it was necessary that he has to be kept in custody which, according to the learned Counsel, would be quite clear indicative of the fact that the the detaining authority could not have arrived the subjective satisfaction and hence the order is entitled to be set aside on this sole ground.

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

6. After looking into the materials available on record and considering the submissions made on either side, the Court has to necessarily agree with the learned Counsel for the petitioner and the impugned order of detention has got to be set aside on sole ground urged by him.

7. It is not in controversy that the detenu was ordered to be detained under Act 14/1982 on the recommendations made by the Sponsoring Authority that he was involved in three adverse cases and in one ground case referred to above. It is true that four cases were registered against the detenu, namely three adverse cases and one ground case. Relevant portion in paragraph 6 of the grounds of detention reads as follows:

6. I am aware that Thiru Venkat alias Venkadachalam is in remand in Kallidaikuruchi Police Station crime number 303/2009 and he has not moved any bail application so far in this case. To restrict him from indulging activities in future, which will be prejudicial to the maintenance of the public order, it is

necessary that he has to be kept in judicial custody. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing the detenu from indulging in such activities which are prejudicial to the maintenance of public order....

8. From the reading of the above, it would be quite clear that the detaining authority has not applied his mind before recording his subjective satisfaction that to restrict the detenu from indulging activities in future which are prejudicial to the maintenance of public order, it was necessary to keep him under preventive detention. Law would expect that before recording so, the detaining authority should arrive at a conclusion as to the possibility of the detenu coming out on bail before clamping an order of detention. In the instant case, the detaining authority has not even stated that there was imminent or real possibility of the detenu coming out on bail and this shows non-application of mind on the part of the detaining authority, which, in the opinion of the court, would vitiate the order of detention.

9. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. M.H.S. Confdl. 06/2010, dated 20.01.2010, passed by the 2nd respondent is quashed. The detenu Venkat @ Venkadachalam, S/o. Chockalingam, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.