

(2010) 08 MAD CK 0493
In the Madras High Court
Case No : H.C.P. No. 749 of 2010

Vijayalakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Penal Code, 1860 (IPC) — Section 302, 395

Citation : (2010) 08 MAD CK 0493

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

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiyar, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—The petitioner is the wife of the detenu Panayadiyan. She challenges an order of the second respondent made in Cr.M.P. No. 11/2010 dated 13.4.2010, whereby her husband was ordered to be detained under Act 14/82 branding him as a Bootlegger.

2. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor for the State. The Court also looked into the materials available including the grounds of detention.

3. Pursuant to the recommendations made by the sponsoring authority that the detenu is involved in five adverse cases namely (1) Lalgudi PS Cr. No. 578/2008 u/s 4(1)(i) r/w 4(1)(aaa) TNP Act; (2) Tiruverumbur PEW Cr. No. 265/2009 u/s 4(1)(aa) TNP Act; (3) Lalgudi PS Cr. No. 314/2009 u/s 4(1)(g) of TNP Act; (4) Lalgudi PS Cr. No. 459/2009 u/s 4(1)(a) r/w 4(1-A) of TNP Act and (5) Kallakkudi PS Cr. No. 54/2010 u/s 4(1)(aa) TNP Act and also in one ground case registered by Lalgudi PS Cr. No. 175/2010 under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of TNP Act for an occurrence that took place on 20.3.2010, and he was arrested on

the very day and remanded to judicial custody, the detaining authority after scrutiny of the materials placed, formed an opinion that the detenu should be detained under Act 14/82 and hence passed the order which is under challenge.

4. The learned Counsel while assailing the order under challenge, raised two contentions before the Court. Firstly, Cr. No. 175/2010 namely the ground case, was registered by Lalgudi PS at about 11.30 A.M. on 20.3.2010, and there was an arrest intimation as found in page 50 of the booklet. Actually the contraband was seized from him, and he was shown arrest, and the intimation was given at 9.00 A.M. as could be seen from page 50 of the booklet, but the case was registered at 11.30 A.M. and the arrest intimation contained Crime No. 175/2010. If really he was arrested at about 9.00 A.M. and the case was registered at 11.30 A.M., the arrest intimation card could not have contained the crime number. Under the circumstances, a clarification should have been called for by the detaining authority from the sponsoring authority, but he failed to do so. Secondly, in the impugned order, the authority has not even stated that there was imminent or real possibility of the detenu coming out on bail.

5. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

6. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was involved in five adverse cases and one ground case as referred to above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, has made the order of detention which is the subject matter of challenge before this Court. As could be seen from the available materials, he was actually found in possession of illicit arrack and was arrested at about 9.00 A.M. as could be seen from the arrest intimation as found in page 50 of the booklet. It is also seen that the case came to be registered only thereafter by the concerned police in Crime No. 175/2010. If to be so, the arrest intimation if it has really come into existence at about 9.00 A.M. as found in page 50, could not have inserted with the crime number, but it is found to be so. Under the circumstances, a duty was cast upon the detaining authority to call for a clarification, but has failed to do so. Under the circumstances, it would be indicative of the non-application of mind on the part of the authority, and he could not have arrived at or recorded the subjective satisfaction on the materials available as the law would require.

7. As regards the second ground urged by the petitioner's side, the authority has not even stated that there was imminent or real possibility of the detenu coming out on bail as the law would require, but has simply stated that there was a compelling necessity to detain him. It would be more apt and appropriate to reproduce the relevant paragraphs of the Full Bench decision of this Court reported in 2007(5) CTC 657 (Kalaiselvi v. The State of Tamil Nadu) as follows:

24. From the reading of the aforesaid decisions, it is clear that the conclusion of

the Detaining Authority that there is imminent possibility of the detenu being released on bail must be based on cogent materials and not on the mere ipse dixit of the Detaining Authority. As has been observed by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of offence, the stage of the investigation, the availability of statutory bail as envisaged u/s 167(2), Proviso of Cr.P.C. Even though it is not possible not desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during pendency of the investigation when there is allegation of commission of serious offence, such as punishable u/s 302 or Section 395 IPC. On the other hand, it is also safe to conclude that in offences relating to prohibition laws or white collar offences, the Courts usually grant bail notwithstanding the fact that investigation may be still going on. Similarly, when a charge-sheet is not filed within the statutory period contemplated, notwithstanding the seriousness of the allegation, on the expiry of the period, the accused got a right to be released on bail.

25. In the present case, the conclusion of the Detaining Authority, as already been extracted. We have searched for the materials on record in support of such conclusion and we find none. There was no imminent possibility of the detenu obtaining statutory bail as hardly 60 days had elapsed from the date of the arrest and the investigating agency had more than a month for completion of the investigation. The alleged offence u/s 302, IPC cannot be characterised as an offence of routine nature which would prompt any Court to grant bail even before completion of investigation. Top of it, the Bail Application had in fact been rejected by the Sessions Judge and no other Bail Application was pending. In such a factual situation, in our considered opinion, the decision of the Supreme Court in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , is squarely applicable and it can be said that the conclusion of the Detaining Authority is mere ipse dixit and there is hardly any material in support of such conclusion. On this score also, the detention order is liable to be quashed.

8. Under the stated circumstances, both the grounds, in the considered opinion of this Court, would suffice to set aside the order.

9. In the result, this habeas corpus petition is allowed setting aside the order of the second respondent, and the detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.