

(2010) 09 MAD CK 0151**Madras High Court****Case No:** H.C.P. No. 851 of 2010

Vanaja

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision: Sept. 13, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 294, 323, 341, 379, 380

Hon'ble Judges: M. Sathyanarayanan, J; M. Chockalingam, J**Bench:** Division Bench**Advocate:** C.V. Ilangoan, for the Appellant; Babu Muthumeeran, Additional Public Prosecutor, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This petition is brought forth by the mother of detenu challenging the order of the second respondent in Memo No. BDFGISSV/76/2010 dated 14.4.2010, whereby the detenu Parthiban was ordered to be detained as a Goonda under the provisions of the Act 14 of 1982.

2. 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 four adverse cases viz. (i) S-7, Madipakkam Police Station Crime No. 10 of 2010 for the offences under Sections 457, 380 of the Indian Penal Code; (ii) S-8 Adambakkam Police Station Crime No. 50/2010 for the offence u/s 379 of the Indian Penal Code; (iii) S-8, Adambakkam Police Station Crime No. 62/2010 for the offence u/s 379 of the Indian Penal Code and (iv) S-10, Pallikaranai Police Station Crime No. 214/2010 for the offence u/s 379

of the Indian Penal Code and ground case in Crime No. 218 of 2010 registered by S-7 Madipakkam Police station for the offences under Sections 341, 294(b), 323, 427, 392, 397, 506(ii) of the Indian Penal Code for the incident that had taken place on 23.3.2010 and the detenu was arrested and remanded to judicial custody on 24.3.2010, the Detaining Authority, on scrutiny of materials placed, passed the detention order, after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, which is the subject matter of challenge before this Court.

4. Learned Counsel appearing for the petitioner raised two grounds, which, according to him, would be suffice to set aside the detention order. There was a representation made on 28.4.2010, but the said representation was neither considered nor disposed of. Learned Counsel would further add that the detenu has moved a bail application in the ground case before the learned Principal District Sessions Judge, Chengalput in Crl.M.P. No. 1149 of 2010 and the same was dismissed on 6.4.2010, but the detention order was passed on 14.4.2010. Thus, on the date of passing detention order, no bail application was pending, but the Authority has observed in the detention order that there was a real possibility of the detenu coming out on bail, which is without any material much less cogent material.

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

6. As could be seen from the available materials, the Detaining Authority has made the order of detention terming the detenu as a Goonda, on the strength of the materials placed before him pertaining to four adverse cases and one ground case as referred to above, and has recorded the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

7. As could be seen from the order, paragraph 4 of the order reads as follows:

4. I am aware that Thiru. Parthiban is in remand in S-7, Madipakkam Police Station Crime Nos. 10/2010 & 218/2010. He has filed a bail petition in S-7, Madipakkam P.S. Cr. No. 218/2010 before the Principal District Sessions Judge, Chengalpattu vide Crl.M.P. No. 1149/2010 and the same was dismissed on 06.04.2010. I am also aware that there is real possibility of his coming out on bail for the above cases by filing another bail application before the Court of Sessions or Hon'ble High Court, since in similar cases bails are granted by the above courts after a lapse of time. If he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru. Parthiban is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the

maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.

8. From the very reading of the above, it is quite clear that the detenu moved for bail application before the Principal Sessions Court, Chengalput in Crl.M.P. No. 1149 of 2010 in the ground case in Crime No. 218 of 2010 and the same was dismissed on 6.4.2010. It is pertinent to point out that the order of dismissal came to be passed on 6.4.2010, but the order under challenge was passed immediately within a week there from. It would be quite clear that there was no bail application pending before any Court of criminal law. On the date when the order of detention came to be passed, it remains to be stated that crime No. 218 of 2010 was registered u/s 397 of the Indian Penal Code.

9. Added further, actually detenu was arrested in the first adverse case in Crime No. 10 of 2010 and also ground case in Crime No. 218 of 2010, both registered by S-7 Madipakkam Police Station on the very same day and he was produced before the Court of criminal jurisdiction and remanded to judicial custody. Nowhere in the order, it is mentioned as to whether the detenu has made any bail application in the first adverse case in Crime No. 10 of 2010. Under such circumstances, it is quite evident that there was no material much less cogent material for the Authority to observe that there is a real possibility of his coming out on bail and this ground is applicable since it would clearly indicate the non-application of mind on the part of the Detaining Authority.

10. This Court has to necessarily disagree with the contention made by the learned Counsel for the petitioner that the representation was made on 28.4.2010 and the same was disposed of on 18.5.2010, rejecting the same. No delay is noticed in the disposal of the representation. Hence, the second ground raised by the learned Counsel for the petitioner is rejected. On the first ground, the detention order has got to be set aside.

11. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in Memo No. BDFGISSV/76/2010 dated 14.4.2010. The detenu, namely, Parthiban, 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.