

A. Joseph Vs The State of Tamil Nadu, The Commissioner of Police and The Superintendent of Central Prison

Court: Madras High Court (Madurai Bench)

Date of Decision: Dec. 5, 2012

Acts Referred: Penal Code, 1860 (IPC) " Section 147, 294(b), 341

Citation: (2013) 1 LW(Cri) 479

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: S. Rajasekar for T. Lajapathi Roy, for the Appellant; C. Ramesh, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

The petitioner is the father of the detenu, Mr. J. Rajkumar @ Prabakaran @ Raja. The second respondent, by his

proceedings in No. 134/BDFGISSV/2012 dated 5.10.2012, has detained him u/s 3(1) and (2) of the Tamil Nadu Act 14 of 1982. Challenging

the same, the petitioner is before this Court with this Habeas Corpus Petition. The detenu, at the time of detention order, was in Palayamkottai

Central Prison on an order of judicial remand made by the learned Judicial Magistrate No. 1, Tirunelveli on 2.10.2012 in connection with

Palayamkottai Police Station Crime Nos. 342 of 2012 u/s 147 IPC r/w. 3(1)(b) of the Tamil Nadu Property (Prevention of Damage and Loss)

Act and 1665 of 2012 under Sections 341, 294(b) IPC r/w 3(1)(b) of the Tamil Nadu Property (Prevention of Damage and Loss) Act. His

remand period was to expire on 16.10.2012.

2. According to the detaining authority, he moved a bail application before the District and Sessions Court, Tirunelveli in Cr.M.P. No. 4695 of

2012 on 3.10.2012 in connection with the case in Palayamkottai Police Station Crime No. 1665 of 2012 and the same is pending. But, in respect

of the case in Crime No. 342 of 2012, he had not moved any bail application. But, in Paragraph No. 6 of the detention order, the detaining

authority has stated as follows:-

Hence, I infer that it is very likely of Thiru. J. Rajkumar alias Prbakarna alias Raja"s coming out on bail in connection with the case in

Palayamkottai Police Station Crime No. 1665 of 2012 and there is also real possibility of the detenu coming out on bail by filing bail application in

connection with the case in Palayamkottai Police Station Crime No. 342 of 2012 before the appropriate court.

3. The learned counsel appearing for the petitioner would submit that the said conclusion arrived at by the detaining authority is totally baseless. In

other words, according to him, there were no materials before the detaining authority to satisfy itself that there was real possibility of the accused

coming out on bail in both the cases.

4. But, the learned Additional Public Prosecutor would submit that the satisfaction is based on materials. According to him, since bail application

had been filed in connection with the case in Crime No. 1665 of 2012, there was likelihood of him coming out on bail. He would further submit

that, the detenu might file bail application in Crime No. 342 of 2012 also.

5. In our considered opinion, the contention of the learned Additional Public Prosecutor cannot be accepted. The preventive detention is basically

preventive in nature and not punitive. As such, preventive detention has got a constitutional guarantee. But, before passing an order of preventive

detention, thereby, curtailing the fundamental rights of the detenu, the procedural safeguards contemplated should be scrupulously adhered to by

the detaining authority.

6. In this case, the detaining authority has simply stated that the accused was likely to come out on bail. When the accused did not file bail

application in one case, it is not known as to how the detaining authority had come to such a conclusion. There is no other case cited which is

similar in nature where the accused had been granted bail by the Courts of law.

7. Thus, in our considered opinion, the statement of the detaining authority that he was satisfied that there was real possibility of the detenu coming

out on bail is totally baseless. This only shows the non-application of mind on the part of the detaining authority. Hence, the detention order cannot

be sustained. In the result, the impugned Detention Order passed by the second respondent, in his proceedings in No. 134/ BDFGISSV/ 2012,

dated 05.10.2012, is quashed and the Habeas Corpus Petition is allowed.

The detenu, by name, J. Rajkumar @ Prbakaran @ Raja, aged about 25 years, S/o. Joseph, is ordered to be set at liberty forthwith, if he is not

required for detention in connection with any other case.