

(2010) 06 MAD CK 0254

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 221 of 2010

S. Uma

APPELLANT

Vs

The District Collector and District
Magistrate and The Secretary to
Government, Government of
Tamil Nadu, Prohibition and
Excise Department

RESPONDENT

Date of Decision: June 10, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 380, 387, 394, 454, 457

Hon'ble Judges: M. Chockalingam, J; A. Arumughaswamy, J

Bench: Division Bench

Advocate: P.Subburaj, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This Writ Application challenges an Order of Detention made by the first respondent on 17.07.2010 whereby the husband of the petitioner, by name, Sankarraaj, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-Leggings, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Goonda".

2. The Court heard the learned Counsel appearing for the petitioner and looked into all the materials available, in particular, the order under challenge.

3. The detenu was involved in five adverse cases as given below:

S/No	Police Station and Crime Number	Section of law
1	Thiruvengadam Police Station Crime No. 119/2007	457 and 380 IPC
2	Thiruvengadam Police Station Crime No. 140/2007	457 and 380 IPC
3	Thiruvengadam Police Station Crime No. 33/2008	454 and 380 IPC
4	Sankarankovil Police Station Crime No. 399/2008	454, 457 and 380 IPC
5	Sankarankovil Police Station Crime No. 36/2009,	454, 457 and 380 IPC

Apart from that, the detenu was also involved in one ground case in Crime No. 250/2009 under Sections 387, 394(b), and 506(ii) IPC registered by Sankarankovil Town Police. 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 in one ground case referred to above, on scrutiny of the materials, the detaining authority has made the order under challenge branding him as a "Goonda" after recording its subjective satisfaction that the activities of the detenu was prejudicial to the maintenance of public order and the same is the subject matter of challenge before this Court.

4. According to the learned Counsel for the petitioner, the detenu was involved in five adverse cases and in one ground case and no bail application was filed either in any one of the adverse cases or in the ground case and the detaining authority has not even stated as to whether there was any real possibility or imminent possibility of the detenu coming out on bail and thus, he has not even formed any opinion and has not recorded its subjective satisfaction arrived by him and therefore, he has stated that if the detenu comes out on bail, he would indulge in such further activities. It was clearly an indicative of the fact of non-application of mind on the part of the detaining authority. On this ground, the order of detention has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above ground.

6. It is not in controversy that on the recommendation made by the sponsoring authority that the detenu was involved in five adverse cases and in one ground case, the detaining authority has made the order of detention after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order. Paragraph 6 of the order of detention reads as follows:

6. I am aware that Thiru. Sankarraaj is in remand in Sankarankovil Town Police Station Crime Number 250/2009 and he has not moved any bail application so far in all cases. If he comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the 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 the public order. On the materials placed before, I am satisfied that Thiru. Sankarraaj is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance of public order under the provisions of the Tamilnadu Act 14 of 1982.

7. A reading of the above would clearly indicate that the detaining authority has not even stated that whether there was any imminent or real possibility of the detenu coming out on bail but on the contrary, he has stated that in future, he may indulge in such activities. In so long as, he was in custody, there is no question of indulging in such activities. Thus, it would be quite clear that the detaining authority has not even arrived at the subjective satisfaction as one required by law. Hence, the order cannot be, but termed as "infirm" and the order of detention has got to be set aside.

8. Accordingly, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.