

(2010) 08 MAD CK 0417

Madras High Court (Madurai Bench)

Case No: Habeas Corpus Petition (MD) No. 215 of 2010

K. Parvathy

APPELLANT

Vs

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

RESPONDENT

Date of Decision: Aug. 2, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 379, 380, 392, 457

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

Bench: Division Bench

Advocate: C.M. Arumugam, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

In this writ petition filed under Article 226 of the Constitution, challenge is made to the order of the 2nd respondent, dated 28.11.2009, whereby one Thangapandi, son of the petitioner, 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 said Thangapandi was involved in seven adverse cases, as detailed below,

Sl. No.	Police Station & Crime Number	Provisions of law
1.	Thirunagar Police Station Cr. No. 547/09	u/s 379 IPC
2.	Thirupparankundram Police Station Cr. No. 399 of 2009	Under Sections 457 & 380
3.	Nagamalaipudukkottai Police Station Cr. No. 384/09	u/s 380 IPC
4.	Thirunagar Police Station Cr. No. 592/09	u/s 392 IPC
5.	Thirupparankundram Police Station Cr. No. 425/09	u/s 457, 380 IPC
6.	Thirunagar Police Station Cr. No. 603/09	u/s 392 IPC
7.	Thirunagar Police Station Cr. No. 604/08	u/s 392 IPC

and also in the ground case in Crime No. 611/2009, registered u/s 392 IPC on the file of Thirunagar Police Station for a crime that had taken place on 15.10.2009, in which he was arrested on the very day and remanded to judicial custody on the next day, on scrutiny of the materials placed before him, the detaining authority, the 2nd respondent herein, after recording his subjective satisfaction that the alleged detenu was so acting in a manner 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. At the time of advancing arguments on behalf of the petitioner, the learned Counsel urged two grounds, which according to him, are sufficient to set aside the order of detention. Firstly, the detenu made a bail application on 19.11.2009 in the ground case Crime No. 611/2009 on the file of Thirunagar Police Station before the Judicial Magistrate No. VI, Madurai, in Cr.M.P. No. 6435/2009 and the same was dismissed on 23.11.2009 and thereafter no bail application filed till the order under challenge came to be passed. But, on the contrary, according to the learned Counsel, the detaining authority has stated in the grounds of detention that there was a real possibility of the detenu coming out on bail and hence this satisfaction recorded by the detaining authority, according to the learned Counsel, was without any material whatsoever and therefore the impugned order of detention has got to be set aside. Secondly, the detenu was arrested in connection with all the seven adverse cases and in the ground case on 15.10.2009 and though the detenu moved bail application before the Judicial Magistrate No. VI, Madurai, only in the ground case as referred to above and the same was dismissed on 23.11.2009, no bail application was filed by the detenu in any one of the adverse cases at all and thus the detenu was in judicial custody in all the cases also on the date when the detention order came to be passed on 28.11.2009 and this aspect was also not considered by the detaining authority while recording his subjective satisfaction as

to the possibility of the detenu coming out on bail and this shows non-application of mind on the part of the detaining authority.

5. The Court heard the learned Additional Public Prosecutor for the State on the submissions made 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 is of the considered opinion that the order under challenge is infirm and hence it has got to be set aside on the grounds urged by the learned Counsel for the petitioner.

7. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority, the detenu was ordered to be detained under the Tamil Nadu Act 14/1982 branding him as a "Goonda" on the ground that he was involved in seven adverse cases and in one ground case as referred to above. It is the admitted position that the detenu moved bail application in the ground case Crime No. 611/2009 before the learned Judicial Magistrate No. VI, Madurai, and the same was dismissed on 23.11.2009 and no bail application was moved thereafter insofar as the ground case is concerned. Added further, the detenu has not moved any bail application in any one of the adverse cases also. The detenu was arrested in the ground case as well as in all the seven adverse cases on the same day i.e. on 15.11.2009 and he was in judicial custody in the adverse cases also. But, the detaining authority has observed as follows in paragraph No. 5 of the grounds of detention.

5. I am aware that Thangapandi has been remanded to judicial custody by Judicial Magistrate No. VI, Madurai, in connection with case in Cr. No. 611/09 u/s 392 IPC of Thirunagar Police Station and he is a remand prisoner, lodged in the Melur Sub-jail and Thangapandi has moved bail application before the Honourable Judicial Magistrate Court No. VI, Madurai in Cr.M.P. No. 6435/09 dated: 19/11/09 and it was dismissed by the Court on 23/11/09. There is real possibility of his coming out on bail by filing another bail application for the above case before the same Court or High Court, since in similar cases bails are granted by the concerned Court or High Court after lapse of time....

8. A reading of the above observation would be clearly indicative of the fact that the said subjective satisfaction could not have been arrived at proper, since no bail application was filed or pending in the ground case after the dismissal of the bail application on 23.11.2009. But, the impugned order of detention came to passed on 28.11.2009, within a few days from the date of dismissal of bail application and, therefore, the subjective satisfaction recorded by the detaining authority was not based on any material, much less cogent material.

9. Insofar as the 2nd ground raised by the learned Counsel for the petitioner is concerned, no bail application was moved in any one of the adverse cases and the detenu was in jail. Under such circumstances, it is clearly indicative of the fact that

the detaining authority has not applied his mind as to the possibility of the detetnu coming out bail in the adverse cases also and, therefore, the order of detention impugned in this petition is liable to be quashed on both the grounds.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in Cr.M.P. No. 41/2009, dated 28,11.2009, passed by the 2nd respondent is quashed. The detenu Thangapandi, S/o. Kaliappan, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.