

(2010) 11 MAD CK 0279**Madras High Court****Case No:** H.C.P. No. 1518 of 2010

Pavunammal

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision: Nov. 18, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 294, 302, 307, 332, 341

Hon'ble Judges: M. Chockalingam, J; C.S. Karnan, J**Bench:** Division Bench**Advocate:** V. Jeevagiridharan, for the Appellant; M. Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

Challenge is made to the order of detention passed by the the second Respondent in No. 376/2010 dated 28.6.2010, whereby the grandson of the Petitioner viz. Appu @ Appuraj was ordered to be detained under the Act 14 of 1982 branding him as "Goonda".

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 two adverse cases viz. (i) Crime No. 458 of 2010 registered by F-2 Egmore Police Station for the offences under Sections 302 and 506(ii) of the Indian Penal Code; (ii) Crime No. 459 of 2010 registered by F-2 Egmore Police Station for the offence u/s 392 of the Indian Penal Code and one ground case in Crime No. 464 of 2010 registered by F-2 Egmore Police Station for the offences under Sections 341, 353, 294(b), 332, 307 and 506(ii) of the

Indian Penal Code for the incident that had taken place on 9.6.2010 and the detenu was arrested on the very day, 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. While advancing arguments on behalf of the Petitioner, learned Counsel would submit that in all the cases viz. two adverse cases and one ground case, the detenu has not filed any bail application, but the Authority has observed that there was a real possibility of the detenu coming out on bail. In all the cases, crimes were grave in nature. Ordinarily, in the case of murder, which is shown as first adverse case, the Court of criminal jurisdiction would not grant bail till investigation is completed. Hence, the observation made by the Detaining Authority is without any basis.

5. Learned Counsel added further that in the report made by the Sponsoring Authority, it is stated that the detenu was arrested in the ground case in Crime No. 464 of 2010 at 1415 hours, but the remand report would further read as if the detenu was sent for judicial remand at about 14.00 hours, which is not possible. Apart from this, in the Tamil version of the remand report, it is stated as if the detenu was produced at 16.30 hours before the Court for judicial remand. There are vital discrepancies. Hence, a clarification should have been called for by the Detaining Authority, but not done so. On these grounds, the detention order has got to be set aside.

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

7. 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 two adverse cases and one ground case as referred to above and has recorded its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

8. It is not in controversy that in all the cases viz. two adverse cases and one ground case, the detenu has not filed any bail application, but the Authority has observed in paragraph 4 of the detention order that there was a real possibility of the detenu coming out on bail. In all the cases, crimes were grave in nature. Ordinarily, in the case of murder, which is shown as first adverse case, the Court of criminal jurisdiction would not grant bail till investigation is completed. Hence, the observation made by the Detaining Authority is without any basis. It is only an expression of the impression in the mind of the Authority and only an inference and that too without any basis or materials much less cogent materials as the law would require.

9. Added further, in the report made by the Sponsoring Authority, it is stated that the detenu was arrested in the ground case in Crime No. 464 of 2010 at 14.15 hours,

but the remand report would further read as if the detenu was sent for judicial remand at about 14.00 hours, which is not possible. Apart from this, in the Tamil version of the remand report, it is stated as if the detenu was produced at 16.30 hours before the Court for judicial remand. There are vital discrepancies. Hence, a clarification should have been called for by the Detaining Authority, but not done so. On these grounds, the detention order has got to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second Respondent in No. 376/2010 dated 28.6.2010. The detenu, namely, Appu @ Appuraj, 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.