
(2007) 03 MAD CK 0185

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 36 of 2007

Chandru

APPELLANT

Vs

The Commissioner of
Police and State of
Tamil Nadu

RESPONDENT

Date of Decision: March 21, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120, 302, 34, 364, 387

Citation: (2007) 03 MAD CK 0185

Hon'ble Judges: P.R. Shivakumar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: K. Jeganathan, for the Appellant; Daniel Manoharan, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

Invoking the writ jurisdiction of this Court, the petitioner, the detenu himself, has challenged an order of detention passed by the first respondent branding him as Goonda under Act 14 of 1982 on 24.10.2006.

2. The order under challenge is perused. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor.

3. As could be seen from the materials available, the sponsoring authority placed its recommendation stating that the detenu has got a ground case registered by E. Pudur Police Station in Crime No. 273/2006 under Sections 387 and 506(ii) of I.P.C. for an occurrence that took place on 25.9.2006, and two adverse cases, first one registered by

Palakkarai Police Station in Crime No. 816/2005 under Sections 120(b), 364 and 302 read with 34 of I.P.C. for an occurrence that took place on 21.9.2005, and second one registered by E.Pudur Police Station in Crime No. 266/2006 under Sections 307 and 120(b) of I.P.C. for an occurrence that took place on 12.9.2006. In view of these cases and also the facts and circumstances, the recommendation was made. The detaining authority, after looking into the materials, was of the opinion that the activities of the detenu were prejudicial to the maintenance of public order, and under the circumstances, he should be branded as Goonda. Thus, the detaining authority arrived at the subjective satisfaction and passed the order of detention. Challenging the said order, this petition has been brought forth.

4. The learned Counsel appearing for the petitioner stressed only one point that not even a bail application was filed before the Court and pending; but, the detaining authority has pointed out that he has not moved any bail application, and even then, it was aware that there is a real possibility of his coming out on bail by filing bail application for the above cases.

5. The learned Counsel relied on a decision rendered by the Division Bench of this Court and reported in 2006 1 L.W. (CRL.) 24 (Vazhivittan v. The State of Tamil Nadu and Anr.) and would point out that in a given case like this, mere statement that the possibility of the detenu's release in case he moves a bail petition, would not satisfy the mandatory requirement, and hence, the impugned order suffers from non-application of mind.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. After hearing both sides and looking into the available materials, this Court is of the considered opinion that it is a fit case where the order has got to be quashed for the simple reason that what is found in the order is only a mere statement that there is a real possibility of his coming out on bail. It remains to be stated that no materials were available in that regard. In the case on hand, the detaining authority has gone to the extent of stating that he has not moved any bail application. Thus, it would be quite evident that no bail application was pending. Under the circumstances, when a bail application has not been filed and pending, the real possibility of his coming out on bail could not be ascertained, and hence, it was a mere statement made by the authority, which, in the opinion of this Court, would not satisfy the legal requirement. Following the decision of this Court referred to above, this Court has to set aside the order.

8. In the result, this habeas corpus petition is allowed setting aside the order of the first respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in any other case.