

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-10-2010

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

AND

THE HONOURABLE MR.JUSTICE C.S.KARNAN

H.C.P.No.1166 of 2010

Nagaraj .. Petitioner

vs

1.The Commissioner of Police
Greater Chennai
Egmore, Chennai 600 008.

2.The Secretary to Government
Home, Prohibition and Excise
Department
Fort St. George,
Madras 600 009.

.. Respondents

Habeas corpus petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus calling for the detention order in respect of Nagaraj, son of Babu, presently lodged in Central Prison, Puzhal, in Memo No.308/BDFGISSV/2010 dated 24.5.2010 passed by the first respondent and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.C.P.Naresh Kumar

For Respondents : Mr.Babu Muthu Meeran
Additional Public
Prosecutor

ORDER

(Order of the Court was made by M.CHOCKALINGAM, J.)

This petition challenges an order of the first respondent dated 24.5.2010, whereby the petitioner himself was ordered to be detained under Act 14/82 branding him as a Goonda.

2.All the materials available and in particular, the order under challenge, are perused. The Court heard the learned Counsel for the petitioner.

3.It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the said detenu was involved in two adverse cases namely (1) Avadi Railway PS Cr.No.32/2006 under Sec.379 IPC and (2) T9 Pattabiram PS Cr.No.415/2009 under Sec.379

IPC, and also in a ground case registered by V4 Rajamangalam PS in Crime No.394/2010 under Sections 341, 323, 294(b), 336, 397 and 506 (2) IPC for an occurrence that had taken place on 11.5.2010, and he was arrested on the same day, and on scrutiny of the entire materials, the detaining authority namely the first respondent herein, has made the order under challenge after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

4.The grounds urged by the learned Counsel for the petitioner, are that as far as the ground case was concerned, he has not moved any bail application before any Court of criminal law; but the authority has stated that there was a real possibility of his coming out on bail which was without any basis or material, much less cogent material; that apart from that, the detenu was actually remanded in the ground case registered in Crime No.394/2010 by V4 Rajamangalam PS, and he was produced before the XIII Metropolitan Magistrate, Egmore, and remanded till 24.5.2010; but, contrarily it is mentioned in page No.3 of the grounds of detention as if he was lodged at Central Prison, Puzhal, as remand prisoner till 26.5.2010; and that it would clearly be indicative of the non-application of mind.

5.Added further the learned Counsel that the special report as found in page 85 of the booklet, did not contain the date; that under the circumstances, it is not made known to the detenu when the said report was filed either before or at the time or after the order under challenge came to be made, and hence, the order is infirm and defective and has got to be set aside.

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

7.As could be seen above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, has made the order under challenge. Insofar as the first ground, this Court has to necessarily disagree with the learned Counsel for the petitioner. It is true that Crime No.394/2010 was registered on 11.5.2010 under Sections 341, 323, 294(b), 336, 397 and 506(2) IPC. Insofar as the two adverse cases, they were actually for theft registered under Sec.379 IPC in which he was granted bail. But, as far as the ground case in Crime No.394/2010 is concerned, the detaining authority has got sufficient materials in order to make an observation that there was a real possibility of his coming out on bail. Hence that ground urged by the petitioner's side, raises to ground.

8.Insofar as the other two grounds, this Court is able to see force in the same. It is an admitted position that as regards Crime No.394/2010, he was produced before the XIII MM, Egmore, and remanded till 24.5.2010 as found in page 85 of the booklet namely remand order. But on the contrary, it is observed in paragraph 3 of the grounds of detention "The Inspector of Police during the course of investigation produced Tr.Nagaraj before the XIII Metropolitan Magistrate Court, Egmore, Chennai and lodged him at Central Prison,

Puzhal, Chennai as remand prisoner till 26.05.2010.", from which it would be quite clear that though the remand was made till 24.5.2010, the authority has observed as till 26.5.2010. This would be not only a discrepancy, but also indicative of the non-application of mind on the part of the authority.

9.As rightly pointed out by the learned Counsel for the petitioner, the special report did not contain the date. In such circumstances, a duty is cast upon the sponsoring authority to put the date when the same was placed before the detaining authority; otherwise, it could not be made known to the detenu when the special report, a relied upon document, containing the materials, was placed before the detaining authority either before or at or after the order was made. This can also be a ground to set aside the order. Therefore, this Court is of the considered opinion that the order is liable to be set aside.

10.Accordingly, this habeas corpus petition is allowed setting aside the order of detention passed by the first respondent. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv

To:

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009.
- 2.The District Magistrate and District Collector
Thiruvallur District, Thiruvallur
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison
(In duplicate for communication to detenu)
5. The Joint Secretary to Govt.,
Public (Law and Order) Fort St. George, Chennai-9
6. The Commissioner of Police, Greater Chennai,
Egmore, Chennai-600 008

HCP No.1166 of 2010