

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 31.03.2010

CORAM:

THE HON'BLE MR.JUSTICE M. CHOCKALINGAM

AND

THE HON'BLE MR.JUSTICE C.S. KARNAN

HCP. No.2218 of 2009

Mr. K. Shankar ... Petitioner

Vs.

1.State, rep. by
the Secretary to Government
of Tamil Nadu, Home,
Prohibition and Excise Department,
St.George Fort,
Chennai- 9.

2. The District Collector-cum-
District Magistrate.
Cuddalore District. ... Respondents

Petition under Article 226 of the Constitution of India, seeking to issue a writ of Habeas Corpus, to call for the entire records in respect of detention order passed by the second respondent dt.16.7.2009 in C1/D.O/32/2009 detaining Silambaram S/o. Sankar, aged about 25 years and quash the same, consequently direct the respondents to produce Silambarsan S/o Sankar, who is detained in Central Prison, Cuddalore before this Court and set him at liberty forthwith.

For Petitioner : Mr. R.S. Kirubakaran

For Respondents: Mr. V.R. Balasubramanian,
Additional Public Prosecutor

O R D E R

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

Challenge is made to an order passed by the second respondent dated 16.7.2009 in C1/D.O/32/2009, whereby the

petitioner's son Silambarasan was ordered to be detained under the Act 14 of 1982 terming him as "Goonda" as defined under the provisions of Tamil Nadu Act 14 of 1982.

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. Admittedly, pursuant to the recommendation made by the Sponsoring Authority that the detenu is involved in three adverse cases viz. (i) Cuddalore N.T. Police station Crime No.209 of 2008 dated 23.4.2008 for the offence under Section 399 of the Indian Penal Code, (ii) Vridhachalam police station Crime No.480 of 2008 dated 24.10.2008 for the offences under Sections 341, 326, 307 read with 34 of the Indian Penal Code (iii) Vridhachalam police station Crime No.152 of 2009 dated 7.4.2009 for the offences under Sections 148, 302 read with 120B of the Indian Penal Code and also a ground case in Crime No.311 of 2009 registered by Vridhachalam police station on 5.7.2009 for the offences under Sections 294(b), 323, 324, 341, 394, 506(ii) and 307 of the Indian Penal Code, on scrutiny of the materials, the Detaining Authority, after recording its subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order, passed the order under challenge after terming him as "Goonda".

4. Advancing arguments on behalf of the petitioner, learned counsel would urge only one point, which, according to him strong enough to set aside the order of detention. No bail application has been filed by the detenu before any Court of criminal jurisdiction. On the contrary, the Detaining Authority has stated that if a bail application is filed, there is a real possibility of the detenu coming out on bail, which would clearly indicate the fact that the Detaining Authority has not arrived at the subjective satisfaction. Hence, it is a fit case to set aside the detention order.

5. Admittedly, an order of detention came to be passed by the second respondent on 16.7.2009 in C1/D.O/32/2009, after terming the detenu as "Goonda". Law would expect that before making an order of detention, the Detaining Authority has to arrive at the subjective satisfaction. In the instant case, no bail application was filed by the petitioner in Crime No.311 of 2009, but the Authority has stated as follows:-

" I am aware that Thiru. Silambarasan, S/o. Sankar has been remanded to judicial custody upto 17.07.2009 and lodged at Central Prison, Cuddalore on connection with Vridhachalam P.S. Cr.No.311/2009. I am aware that there is real possibility of his coming out on bail by filing bail application for the above case before the

same Court of Higher Court, since in similar cases, bails are granted by the concerned Court or Higher Courts after lapse of time or their bail application are dismissed by the Court. If he comes out on bail, he will indulge in future activities, which will be prejudicial to the maintenance of 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 public order. On the materials placed before me, and after careful perusal of records and his antecedents, I am satisfied that the said Thiru. Silambarasan, S/o Sankar is a Goonda as per Sec.2(f) of Tamil Nadu Act 14/1982 and there is 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 Tamil Nadu Act 14 of 1982."

6. From the very reading, it is quite clear that no bail application was filed by the detenu. Even though the Authority has stated that there is a real possibility of detenu coming out on bail, it is quite indicative of the fact that there is no basis or material much less cogent material to arrive at such a conclusion and thus, its conclusion was premature. It was only an expression or apprehension in the mind of the Authority and nothing more. The Authority has also stated that there is a possibility of application being dismissed by the Court and thus, the Authority has not arrived at the subjective satisfaction. The same is indicated by the Authority as found in the order. In the considered opinion of the Court, this ground is suffice to vitiate the detention order.

7. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent dated 16.7.2009 in C1/D.O/32/2009. The detenu, namely, Silambarasan, who is now detained in Central Prison, Cuddalore is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ssa.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. The Secretary to Government
of Tamil Nadu, Home,
Prohibition and Excise Department,
St.George Fort,
Chennai - 9.
 2. The District Collector-cum-
District Magistrate.
Cuddalore District.
 3. The Superintendent,
Central Prison,
Cuddalore.
 4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.
 5. The Public Prosecutor,
High Court, Madras
- + 1 cc to Mr.R.S.Kirubakaran, Advocate SR No.21383
- KA(CO)
SR/15.4.2010
- H.C.P. No.2218 of 2009

सत्यमेव जयते

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