

**MeenA. Vs. .The District Collector and District Magistrate of Cuddalore District Cuddalore, and ors.**

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**Court :** Chennai

**Decided On :** Sep-24-2010

**Judge :** M.CHOCKALINGAM; M.SATHYANARAYANAN, JJ.

**Acts :** Constitution Of Indian - Article 226

**Appeal No. :** H.C.P.No.928 of 2010

**Appellant :** MeenA.

**Respondent :** .The District Collector and District Magistrate of Cuddalore District Cuddalore, and ors.

**Advocate for Def. :** Mr.Babu Muthu Meeran, Adv.

**Advocate for Pet/Ap. :** Mr.P.Mani, Adv.

**Judgement :**

1. This petition challenges an order of detention made by the second respondent dated 29.4.2010, whereby the petitioner's son Arul @ Arulpandi @ Arulpandiyan @ Arunpandian was ordered to be detained under Act 14/82 terming him as a Goonda as described under the provisions of the Act.

2.The Court heard the learned Counsel for the petitioner and looked into all the materials available and 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 four adverse cases namely (1) Vadalur PS Cr.No.251/08 under Sections 294, 323 and 332 IPC; (2) Vadalur PS Cr.No.395/08 under Sections 448, 341, 324, 323 and 506(ii) IPC; (3) Vadalur PS Cr.No.68/09 under Sections 294, 323, 324 and 506(ii) IPC and (4) Vadalur PS Cr.No.172/2010 under Sections 341, 294, 323, 324 and 307 IPC and also in a ground case in Crime No.173/2010 of Vadalur PS registered under Sections 341, 294(b), 506(ii) and 307 IPC for an occurrence that had taken place on 20.4.2010, and he was arrested and remanded to judicial custody on the same day, the detaining authority on scrutiny of the materials placed, made the order under challenge after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order.

4.The learned Counsel advancing his arguments on behalf of the petitioner, would urge that the bail application filed in the ground case in CrI.M.P.No.1523/2010, was pending on the file of the Sessions Division, Cuddalore; but the authority has passed the order on 29.4.2010, observing that there was a real possibility of the detenu coming out on bail. The learned Counsel would further add that the fourth adverse case is shown as if it was committed on 19.4.2010; that the same was registered under Sections 341, 294, 323, 324 and 307 of IPC; the ground case is shown to have been committed on 20.4.2010, the very next day; that the arrest is also shown only in the ground case and not in the said adverse case; and that when the arrest itself is not shown, there is no question of making any bail application that would arise; but the authority has not considered any one of these aspects and has stated that there was a real possibility of the detenu coming out on bail.

5. Answering the above contentions, the learned Additional Public Prosecutor for the State would submit that it is true that he was involved in four adverse cases and one ground case; that it is also true that he made a bail application in CrI.M.P.No.1523/2010 pending on the file of the Sessions Division; that in the earlier cases 1 to 3, he moved for bail, and bail was granted, and under the circumstances, the authority was perfectly correct in recording that there was a real possibility of the detenu coming out on bail; that as far as the fourth adverse case was concerned, he was arrested, and all the documents pertaining thereto are all available in the booklet; that they were all supplied to him; that under the circumstances, the ground urged by the petitioner that in the fourth adverse case, the arrest was not shown was not correct, and hence the petition has got to be dismissed.

6. After hearing both sides, this Court is of the considered opinion that the grounds brought to the notice of the Court by the petitioner's side, have got to be applied to set aside the order under challenge. It is true that an order came to be passed by the detaining authority after recording the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order since he was involved in four adverse cases and one ground case. The fourth adverse case is shown to have been committed on 19.4.2010, while the ground case is shown to have been committed on 20.4.2010. The fourth adverse case was registered under Sections 341, 294, 323, 324 and 307 IPC, and the ground case was registered under Sections 341, 294(b), 506(ii) and 307 IPC. Though it was urged by the learned Additional Public Prosecutor for the State that the materials pertaining to the arrest in the fourth adverse case, were supplied to the detenu, it was actually not reflected in the order under challenge, and hence this would be indicative of the non-application of mind on the part of the detaining authority.

7. Apart from the above, as far as the ground case was concerned, a bail application was moved in CrI.M.P.No.1523/2010, and it was also pending on the file of the Sessions Division, Cuddalore. The impugned order came to be passed on 29.4.2010. It is pertinent to point out that the offence relating to Crime No.172 of 2010, was shown to have been committed on 20.4.2010, and he was also arrested on the same day. Hence he would have made the bail application before the Court of Session only subsequently, and it was also pending. Within a short span of a week, the order came to be passed wherein the authority has stated that there was a real possibility of his coming out on bail. This was only an expression of the impression of the authority without any material, much less cogent material as the law would require, and hence both the grounds have got to be applied to brand the order under challenge as infirm and defective.

8. Accordingly, the order of detention passed by the second respondent is set aside, and the detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

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