

Sakthivel. Vs. the State of Tamil Nadu, and anr.

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Court : Chennai

Decided On : Aug-23-2010

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

Acts : Constitution Of India - Article 226

Appeal No. : H.C.P.NO.465/2010

Appellant : Sakthivel.

Respondent : The State of Tamil Nadu, and anr.

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

Advocate for Pet/Ap. : Mr.N.Doraisamy, Adv.

Judgement :

1. Challenge is made to the order of the second respondent made in NO.C.M.P./No.43/D.O./Salem City/2009, dated 08.09.2009 whereby the detenu, viz., Senthil, S/o.Chinnathampi, the brothe-in-law of the petitioner, was termed as "Drug Offender" under the provisions of Tamil Nadu Act 14 of 1982.

2.The affidavit filed in support of the petition and the grounds of detention are perused. The order under challenge is also perused. The Court heard the learned counsel for the petitioner and also the learned counsel for the State.

3.Concededly, the order under challenge came to be passed by the second respondent, Detaining Authority, on the strength of the recommendations made by the Sponsoring Authority, whereby 3 adverse cases, namely Crime Nos.133/2008, 7/2009 and 54/2009 registered by Salem, NIB CID and also one ground case in Crime No.110/2009 were noticed. In Crime No.110/2009, the detenu was alleged to have been found in possession of 2.5 Kgs of Ganja and a case came to be registered for the offence u/s.80[c] read with 20[b][ii][B] of NDPS Act. The Detaining Authority has arrived at subjective satisfaction, on scrutiny of the materials available, that the activities of the detenu were prejudicial to the maintenance of public order and health and hence he has got to be termed as Drug Offender. Further, in order to prevent him from indulging in such activities in future, a necessity arose to detain him under the provisions of the Tamil Nadu Act 14 of 1982 and hence he made the order of detention. The said order is the subject matter of challenge before this court.

4.Attacking the order under challenge, the learned counsel for the petitioner raised three points, viz.,

[a] Firstly, there was a delay in consideration of the representation dated 11.09.2009 made by the detenu.

[b] Secondly, the materials which were actually placed in page 94 to 97 are extraneous and

[c] Lastly, there was no real possibility of the detenu coming out on bail since he has not made any bail application in Cr.No.110/2009 and under such circumstances, the order of detention has got to be quashed.

5.The court heard the learned Additional Public Prosecutor on the above contentions.

6.The learned Additional Public Prosecutor would submit that this is the second petition filed by the petitioner and in the first petition, the petitioner has raised the ground of delay and the court rejected the petition and it is submitted that the same ground is raised in the second petition also. In respect of the other two grounds raised by the learned counsel for the petitioner, the learned Additional Public Prosecutor would submit that they are to be rejected in toto by this court for the simple reason that insofar as the real possibility is concerned, in all the three adverse cases, the detenu has moved for bail and the bail was actually granted by this court in all the 3 adverse cases and under such circumstances, the detaining authority has observed that there is a real possibility of the detenu coming out on bail in the ground case also. The learned Additional Public Prosecutor would submit in respect of third contention raised by the learned counsel for the petitioner that the materials placed in page Nos.94 to 97 are in respect of the grant of bail in similar cases and submitted that the petitioner has not made out any new ground to set aside the detention order.

7.After a thorough scrutiny of the materials available and considering the submissions made, the Court is of the considered opinion that the order of detention cannot be set aside for the following reasons:

8.It is not in controversy that the order came to be passed on 08.09.2009 by the Detaining Authority on the recommendations made by the Sponsoring Authority, placing materials in respect of 3 adverse cases and one ground case as referred to above. From a perusal of the materials, it could be seen that the detenu has moved bail applications in respect of the three adverse cases and he has been granted bail already. The Authority was perfectly correct in observing that when the detenu prefer any bail application in respect of the case in Cr.No.110/2009, there is a real possibility of the detenu in coming out on bail and hence, it was not an inference but an expression of the real possibility. Hence, it cannot be considered as a ground. Insofar as the next ground as to the materials placed in page 94 to 97 are extraneous is concerned, the said contention cannot be countenanced for the reason that those materials are pertaining to the observation made by the authority that in similar cases, bail were granted by the court and insofar as the ground of delay, this court had an occasion to consider the same contention in the earlier HCP and also rejected the same and hence, it has got to be stated that no ground is made out by the petitioner to set aside the order of detention dated 08.09.2009.

9.Accordingly, the Habeas Corpus Petition is dismissed.

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