
(2014) 09 MAD CK 0075

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 622 of 2014

Angulakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g) 21 22 22(5)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1)
Penal Code, 1860 (IPC) — Section 379

Citation : (2014) 2 LW(Cri) 525

Hon'ble Judges : V.M. Velumani, J;S. Manikumar, J

Bench : Division Bench

Judgement

V.M. Velumani, J.—Wife of the detenu, Jayabal, S/o.Muthusamy, has sought of a Writ of Habeas Corpus, to call for the entire records pertaining to the proceedings of the 2nd respondent in Cr. M.P. No. 04/2014, dated 31.05.2014, quash the same, and set her husband aged about 37 years, at liberty. According to the petitioner, her husband was arrested by the Inspector of Police, Velayuthampalayam Police Station, in Crime No. 204 of 2014, under Section 21(1) of the Mines and Minerals (Development and Regulation) Act 1957 r/w. Section 379 of IPC. He was produced before the learned Judicial Magistrate No. II, Karur, in Cr.M.P. No. 2708 of 2014. According to the Inspector of Police, Velayuthampalayam Police Station, on 26.05.2014, they conducted a vehicle check at Velayuthampalayam Bypass 4 Road near Saravana Store, on the instructions of the higher police officials. While conducting the vehicle check, about 05.30 hours, they intercepted a Tipper lorry bearing Registration No. TN-28-AW-7238. On the examination of the lorry, they found about 4 1/4 units of sand in the lorry. Husband of the petitioner, viz., Jayabal, S/o.Muthusamy, was driving the vehicle. He gave a statement that he is the Owner-cum-Driver of the lorry and he did not have a driving license. He had no valid permit for transportation of sand. He gave a statement that he would buy river sand from bullock carts, at a lower cost, in Thavittupalayam east area of Manmangalam

Taluk and transport the same, through his Tipper lorry bearing Registration No. TN-28-AW-7238. He would sell the same, in Karnataka State and Hosur suburban areas. A case in Crime No. 204 of 2014 was registered. He was arrested on 26.05.2014 and remanded to judicial custody in Central Prison, Trichirappalli.

2. The Inspector of Police has filed an affidavit before the second respondent, District Collector, Karur District, about the registration of Crime No. 204 of 2014 and lodging of the husband of the petitioner in Central Prison, Trichirappalli. He has requested that necessary action may be taken against him under Section 2(gg) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), if deemed fit, by the detaining authority. Considering the materials, the second respondent has passed a detention order on 31.05.2014. According to the second respondent, he was satisfied that the husband of the petitioner is a Sand Offender, as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982 and found indulging in activities prejudicial to the maintenance of the public order and public health. The second respondent has given the details for detention, in the grounds of detention.

3. It is the case of the petitioner that he has given a representation on 04.06.2014 to the first respondent and no order has been passed on the said representation till date. Therefore, she has filed the present Habeas Corpus Petition to quash the impugned order of detention passed by the second respondent and to produce the body and person of her husband before this Court, and to set him at liberty.

4. Learned counsel for the petitioner argued that the second respondent without subjective satisfaction and without applying his mind, has passed the impugned order, in a mechanical manner. He contended that the remand order is in English and that the same was not furnished. He further contended that translated copy in Tamil was also not furnished. Report of the Inspector of Police, Velayuthampalayam Police Station, dated 26.05.2014 filed in the Court of Judicial Magistrate, Karur, was also not furnished to the detenu. According to the learned counsel for the petitioner, the ground case of the husband of the petitioner is not similar to the case, mentioned in the detention order. The statement of the detaining authority that there is real possibility of the detenu coming out on bail in the ground case is on presumption and without knowing the result, in the bail application filed by the detenu. For the above reasons, learned counsel for the petitioner argued that the impugned order is liable to be quashed.

5. On the other hand, Mr. C. Ramesh, learned Additional Public Prosecutor argued that the second respondent has considered all the materials on record and only after arriving at, a subjective satisfaction that the detenu is a Sand Offender and indulged in activities, which are prejudicial to the maintenance of public order and public health, passed the impugned order. The detaining authority has given cogent and valid reasons for detaining the detenu. According to him, a bare

reading of the grounds of detention, would show that the contention of the learned counsel for the petitioner that the detention order has been passed mechanically, without arriving at the subjective satisfaction, is not tenable. For the above reasons, Mr. C. Ramesh, learned Additional Public Prosecutor, appearing for the respondents, submitted that the impugned Detention Order has been passed, after following the procedure and after arriving at the subjective satisfaction that there was a compelling necessity, and in order to prevent the detenu, from acting in any manner prejudicial to the maintenance of Public Order.

Heard the learned counsel for the petitioner and Mr. C. Ramesh, learned Additional Public Prosecutor and perused the materials available on record and the Judgments relied on by the parties.

6. Though several grounds have been urged by the learned counsel for the petitioner, we are not inclined to advert to all, for the reason that from the records, it is seen that the remand order is in English. Translated copy in Tamil version has not been furnished to the detenu. English language is not known to the detenu. Therefore, there is violation of Article 22(5) of the Constitution of India.

7. On the aspect of furnishing the copy of the remand order and the documents relied on by the Detaining Authority, in the language known to the detenu, this Court deems it fit to consider the following decisions:--

"(a) In *Powanammal Vs. State of Tamil Nadu and Another*, , the Apex Court has framed the following question:

"The short question that falls for our consideration is whether failure to supply Tamil version of the order of remand passed in English a language not known to the detainee, would vitiate her further detention."

It is worthwhile to extract paragraphs 8 and 9 of the majority view of the Apex Court.

"8. The law relating to preventive detention has been crystallized and the principles are well neigh settled. The amplitude of the safeguard embodied in Art. 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detainee but also to supplying their translation in script or language which is understandable to the detainee. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See *Hadibandhu Das Vs. District Magistrate and Another*, ."

8. However, this court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention

has been held to be fatal to continued detention, the detainee need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detainee's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detainee, should the document be in a different language."

(b) In *Wankanner Jain Social Welfare Society Vs. Jugal Kishore Sapani*, , the Hon'ble Division Bench of this Court held as follows:--

"15. It is well settled that strict compliance with the prescribed procedure or all legal requirements are considered as essential by various judicial pronouncements of the Apex Court and this Court. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provisions under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of Constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the justification to detain the slightest infraction of the constitutional guarantees would lead to the detainee being set at liberty.

18. It is by now well settled that in all detention laws, the orders of detention and the continuance of detention should be in conformity with Article 22 of the Constitution and the procedure laid down therein and slightest infraction of the constitutional protection guaranteed by Article 22 and in some cases Article 21 or 19(1)(g) would be a valid ground to make rule nisi absolute and consequently Courts do direct the detenu to be set at liberty forthwith."

(c) In *Rabiyathil Pathavia v. The State Government of Tamil Nadu*, reported in 2001 MLJ (Cri) 788, the Apex Court, following the judgment in *State of Tamil Nadu Vs. Senthil Kumar and Anr*, , of the Apex Court, at paragraph 4, held as follows:--

4. However, the detenu has a strong case on the other point, namely, the order of detention is not in Tamil, and is not accompanied by any covering letter explaining the purpose for which the documents were served on the detenu. Evidently, the documents in question were served on the detenu without the detenu being told about the purpose for which they are served. Failure on the part of the authorities to inform the purpose for which the documents were supplied to the detenu without any covering letter, will certainly vitiate the order of detention. Whenever a document is served on a detenu, the detenu should be in a position to know the purpose for which it is served on him, especially, when

such documents are served after initial order of detention was passed against him. So long as the purpose for which the documents are served on the detenu is not disclosed, it will certainly create confusion in the mind of the detenu in the matter of submitting an effective representation, thereby, causing infringement of the constitutional right of the detenu as envisaged under Article 22(5) of the Constitution. That apart, the detenu has a case that he knows only Tamil and does not know English. Admittedly, the Tamil translation of the additional documents is also not served on the detenu. The view we are taking is fortified by no less authority than the decision, of the Supreme Court reported in *State of Tamil Nadu v. Senthil Kumar*, (vide paragraph 13).

(d) In *Muruga Thevar v. State of Tamil Nadu*, reported in 2007 (1) MLJ (CrI) 987, the Hon'ble Division Bench of this Court held as follows:

"With regard to remand order and remand extension order, which formed basis for the detaining authority to come to the conclusion that the detenu was in custody in connection with a criminal case, were not furnished in Tamil."

At paragraph 6, it has been further held as follows:--

"A perusal of the grounds of detention indicates that the two documents in questions viz., the remand order and remand extension order formed the basis for the detaining authority to come to a conclusion that the detenu was in custody in connection with the criminal case and that she was likely to be released on bail after filing the bail application. Therefore, it can be said that the documents in question were relied upon documents. Once such conclusion is reached, the ratio of the decision laid down by the Honourable Supreme Court is squarely applicable. Therefore, it is immaterial as to whether any prejudice was caused to the detenu and since the translated version of the relied upon document had not been given, it must be taken that the order of detention was vitiated."

(e) A Hon'ble Division Bench of this Court in *Karunakaran v. State of Tamil Nadu*, (HCP. No. 626/2008 dated 06.04.2009), at paragraph 6, held as follows:--

"6.....But, in so far as the translated version is concerned, when the copies are served upon the detenu, there was really a request for giving a translated copy and actually the translated copy was not supplied to him. It is quite evident from the communication particulars what is all mentioned thereunder is that he could get the translated version from the counsel who is already appointed to him. But that is not accepted, when the detenu is not conversant with the language in which the copies were served and when the request is also made, the authorities should have supply the same so that he could understand the contents of the material. Mere supply of the copies of the documents relied on without making the detenu to understand what it is, would not satisfy the law and hence non compliance by giving the translated version would also made the order suffers and further this would be violative of right available to the detenu and this would make the order suffer....."

9. As the detenu was not furnished with the remand order in Tamil language, which is the only language known to him, continued detention of the detenu is rendered illegal. On this sole ground itself, the detention order is liable to be set aside. This Court, in *Selvam @ Selvendran v. The Secretary to Government, Home, Prohibition and Excise Department, Chennai and others* [H.C.P.(MD) No. 546 of 2014, dated 01.08.2014], wherein one of us [S. Manikumar, J.] was a party, at paragraph 15, held as follows:--

"15. Thus it is well settled in catena of decisions that if any material document is considered by the detaining authority for arriving at a subjective satisfaction by the Detaining Authority, the detenu is entitled to a copy of such document, in the language known to him and that the contents of the same should also be explained....."

10. Therefore, there is violation of the procedure and the settled judicial pronouncements referred to above. For the reasons, stated above, this Court is of the view that the impugned Detention Order has to be set aside. Accordingly, the impugned Detention Order in Cr.M.P. No. 04/2014, dated 31.05.2014, by the second respondent detaining the detenu viz., Jayabal, S/o.Muthusamy, is quashed and the Habeas Corpus Petition is allowed. The detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.