
(2003) 03 MAD CK 0161
In the Madras High Court
Case No : H.C.P. No. 2130 of 2002

Elumalai

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0161

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : S. Swamidoss Manoharan, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The petitioner herein challenges the order passed by the Commissioner of Police, Chennai dated 9.9.2002 directing the detention of Tr.Arul Alex dubbing him to be a "Goonda" within the meaning of Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. There are as many as 10 criminal cases mentioned against the accused by way of the adverse cases, while an incident dated 28.8.2002 has been relied upon as the incident for the ground case which has been instituted for offences under Sections 341, 336, 427, 392 and 506(2) I.P.C. It is reported in the ground case that on 28.8.2002, the petitioner along with two others came near one Natarajan giving him a threat and snatched the wrist watch from Natarajan. While doing so, the detenu brandished an iron pipe and threatened that he will beat Natarajan and when the public gathered there because of the hue and cry raised by Natarajan, the detenu and the other two threw bottles from the nearby cool-drinks shop and hurled some against the public, which bottles fell on the road and broke into pieces. Because of this, the tranquility was disturbed. It is on this ground that generally the detention order came to be passed. While passing the detention order, the Detaining Authority also took into consideration the fact

that Arul Alex is in remand and that there was imminent possibility that he might come out on bail for offences under Sections 341, 336, 392, 427 and 506(2) I.P.C and that if he came out on bail, he would indulge in further activities which would be prejudicial to the maintenance of public order.

3. Learned counsel for the petitioner Mr. Swamidoss Manokaran firstly stated that a very important document was not put before the Detaining Authority and the Detaining Authority has not considered the same. He pointed out that a bail application was made by the detenu on 3.9.2002 of which the notice was given to the Public Prosecutor and the bail order came to be actually passed on 6.9.2002. The learned counsel further states that in pursuance of the bail order granted by the concerned Metropolitan Magistrate on 6.9.2002, the detenu was also prepared to furnish sureties, but before he was so released, the detention order dated 9.9.2002 was served on him on 10.9.2002. Learned counsel points out from the grounds that this bail order as well as the bail application filed by the detenu have nowhere been considered by the Detaining Authority and therefore, the detention order is clearly vitiated.

4. Learned counsel very heavily relied on the observations made by the Supreme Court in the decision reported in 1992 SCC (CrI) 1 (ABDUL SATHAR IBRAHIM MANIK -vs- UNION OF INDIA) and more particularly on the observations in paragraph 12 (6) which is to the following effect:

"In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

5. As against this however, the learned Additional Public Prosecutor relied on the decision reported in K. Varadharaj Vs. State of Tamil Nadu and Another, . From this, the learned Additional Public Prosecutor suggests that it is not necessary that in all the cases where the bail has been granted that the bail application has to be considered and the question would have to be considered as to whether there was anything in that bail order and bail application which was bound to be considered by the Detaining Authority. Learned Additional Public Prosecutor invites our attention to the contents of paragraphs 6 and 7 in this case which are to the effect that in each and every case it is not necessary to supply the bail application and the order thereupon and it will only be necessary to consider the bail application and the order, provided there is some vital material in those documents. In that case also, the bail order was passed in favour of the accused. The Court took into consideration the fact that the bail was granted since the Public Prosecutor had no objection to the grant of bail and therefore that factor was considered to be a vital material by the Supreme Court and ultimately the Supreme Court allowed the appeal filed by the detenu.

6. Learned Additional Public Prosecutor is at pains to point out that in this case

however, there would be no question of supplying the bail order and the bail application firstly because, inspite of the order of bail, the detenu still continued to be in custody and secondly, there was nothing material in the order passed or in the application.

7. In our opinion, the detention order must suffer for non-application of mind. In paragraph 6 in the case of K.VARADHARAJ cited supra, the law laid down by the Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK has been completely approved. In that case the Court had distinguished the decision in AHAMEDKUTTY's case reported in 1990 (2) SCC (CrL.) 1. When we see sub-paragraph 6 of paragraph 12 in the case of ABDUL SATHAR IBRAHIM MANIK, it is clear that the fact of the grant of bail has been considered very positively and the Court has expressed its opinion that the bail applications where the bail has been granted have become extremely relevant documents and have to be taken into consideration along with the order. Sub-paragraph 6 of paragraph 12 has to be read from ABDUL SATTAR IBRAHIM MANIK's case on the backdrop of sub-paragraphs 3 and 5. Insofar as sub-paragraph 3 is concerned, the Supreme Court there considered the fact of the detenu being in custody to be a relevant fact. In sub-paragraph 5, the Apex Court then proceeded to hold that if the bail application was dismissed in the sense that the bail was refused, then there will be no question of supplying such a document. However, in sub-paragraph 6, the Supreme Court positively came to the conclusion that where the detenu was released on bail and was at liberty at the time of passing the detention, then the Detaining Authority had to necessarily rely upon them as that would be a vital ground for ordering the detention. Therefore, the Apex Court had specifically held that the release on bail is a vital factor. The Supreme Court also held that the detenu being at liberty was also a vital factor. On this backdrop when we see K.VARADHARAJ's case, this law has been totally confirmed and followed by the observation of the Court in paragraph 6. The Apex Court goes slightly further in K.VARADARAJ's case that the authority has to take into consideration the fact as to whether the detenu was in custody and in that case he was in the custody. In the present case also, the detenu is admittedly in custody because he was not released before the order was passed. In VARADHARAJ's case, the Supreme Court then held that the contents in the bail application did not contain any vital material of which the Detaining Authority had to take notice. In our opinion this is a distinguishing factor because, in the present bail application, as we see, the detenu has asserted that he was innocent of the said commission of the offence. We may not take this to be "be all and end all" of the matter, but when we read the order passed on that, it is clear that the State opposed this bail application on the ground that the offence was going to be altered from Section 392 to Section 397. The learned Sessions Judge has observed that the contention of the detenu was that they were detained by the police illegally before the visit of the Chief Minister. Learned Sessions Judge further found in that order that the Prosecution's case was that they were going to alter the offence from Section 392 to Section 397 because, the weapon had been used for the commission of

the offence. Learned Sessions Judge found that there were no supporting documents for altering the so-called offence from Section 392 to Section 397 meaning thereby, there were no supporting documents to suggest that the detenu had used any weapon for the offence. This in our opinion is a very material circumstance which was bound to be taken into consideration. Perhaps the Detaining Authority might not have taken the decision to detain the detenu if he had seen the order of the Sessions Judge wherein the Sessions Judge had pointed out that there was no document supporting the Prosecution's case that a weapon was used for the commission of the offences.

8. If that is so, there will be no question of proceeding with the matter any further and the detention will have to be struck down on the ground of the non-consideration of vital material. It cannot be refused that the learned Public Prosecutor had represented the State in the Criminal Court which granted the bail. It again cannot be denied that the Public Prosecutor is the representative of the State and that the Public Prosecutor as well as probably even the Investigating Officer were aware of the bail application having been made and also the bail order having been passed on 6.9.2002. Therefore, it was the duty of the Sponsoring Authority to put both these materials before the Detaining Authority. That not having been done, the detention order must suffer and must be quashed and is accordingly quashed.

9. Rule is made absolute. The Habeas Corpus Petition is allowed. The order of detention dated 9.9.2002 is set aside and the detenu Arul Alex S/o Elumalai is directed to be set at liberty forthwith, unless he is required in connection with any other case.