
(2005) 06 MAD CK 0105
In the Madras High Court
Case No : H.C.P. No. 71 of 2005

Karthik @ Karthikeyan

APPELLANT

Vs

The Commissioner of Police and Another

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Citation : (2005) 3 CTC 386

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : K. Seetharam, for the Appellant; Abudu Kumar Rajarathinam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—One Karthik @ Karthikeyan, who was detained as "Goonda", as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned order dated 12.08.2004, challenges the same in this Petition.

2. Heard learned counsel for petitioner as well as learned Government Advocate (Criminal Side) for respondents.

3. After taking us through the grounds of detention and all other connected materials, learned counsel appearing for the petitioner has made the only contention that a perusal of the grounds of detention, particularly paragraph No. 4, does not show that the Detaining Authority has applied his mind and in the absence of imminent possibility of the detenu coming out on bail, the detention order cannot be sustained.

4. With regard to the said contention, we verified the awareness or satisfaction of the Detaining Authority, which is evident from paragraph No. 4 of the grounds of detention. It shows that the Detaining Authority was aware of the fact that the detenu was in remand and he has not moved any bail application till the date of

passing of the detention order. It is clear that the Detaining Authority, after being satisfied that the detenu is a remand prisoner and after taking note of the fact that though he has not moved any bail application till that date, after finding that there is possibility of his coming out on bail for the offences charged, since in similar cases, bails are granted either by the concerned Court or by Higher Courts, and also in the light of the fact that if he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order, clamped the order of detention.

5. According to the counsel for the petitioner, inasmuch as the detenu has not moved any bail application, there is no question of imminent possibility of his coming out on bail. In other words, according to him, in the absence of moving an application for bail, it cannot be expected that he will come out on bail and there is compelling necessity for detaining him under preventive detention law.

6. On verification of the statement of facts, particularly in paragraph No. 4 of the grounds of detention, and in the light of the well known decisions of the Supreme Court *Kamarunnissa v. Union of India*, 1991 SCC (Cri.) 88 as well as *Abdul Sathar Ibrahim Manik v. Union of India* 1992 SCC (Cri.) 1 we are unable to appreciate the above contention.

7. In *Kamarunnissa's* case (cited supra), after discussing catena of earlier decisions, Their Lordships of the Supreme Court have formulated the following points:

"From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court. What this Court stated in the case of *Ramesh Yadav Vs. District Magistrate, Etah and Others*, was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.

8. Based on the guidelines laid down in Kamarunnissa's case, in the subsequent decision, viz., Abdul Sathar Ibrahim Manik's case (cited supra), the Honourable Supreme Court has set out certain conclusions. Amongst the six conclusions, Clause-2 is relevant for the purpose of the case on hand, which reads as under:

"When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court."

9. It is not in dispute that the dictum laid down in those cases still holds the field. It is clear from the above decisions that a detention order can be passed if the Detaining Authority has reason to believe on the basis of reliable materials placed before him that there is a real possibility of his being released on bail and on being so released, he would in all probability indulge in prejudicial activity. This aspect depends upon various considerations and facts and circumstances of each case. As pointed out in Abdul Sathar Ibrahim Manik's case, if the Detaining Authority satisfies himself that though the detenu has not filed bail application and there is a possibility of his being released on bail and on being so released, he is likely to indulge in prejudicial activity, then, the authority is free to invoke provisions of Preventive Detention Act. In the case on hand, it is not in dispute that the Detaining Authority was aware of the relevant fact that on the date of the detention order, the detenu was in remand and though he has not moved any bail application, it cannot be ruled out that he will not file any bail application for coming out and in such circumstances, if he comes out, he will indulge in further activities, which will be prejudicial to the maintenance of the public order. We find that the Detaining Authority was possessed of all the required materials/details before clamping the order of detention.

10. In view of what is stated above, we find no valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.