

(2013) 12 MAD CK 0012
In the Madras High Court
Case No : H.C.P. (MD) No. 1008 of 2013

Kathiresan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 2 MLJ(Cri) 85

Hon'ble Judges : V.S. Ravi, J;S. Tamilvanan, J

Bench : Division Bench

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for

the respondents. The Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, seeking an order to call for the records

pertaining to the detention order passed by the second respondent in P.D. No. 27/2013, dated 01.06.2013 and to quash the same and also direct

the respondents to produce the person or body of the alleged detenu , viz., Muthu @ Mutharnilselvan, aged about 22 years, before this Court and

set him at liberty.

2. The learned counsel appearing for the petitioner submitted that the respondents have not followed the mandatory procedures as contemplated

under 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) herein after referred to as ""Act"", and there is a

violation of fundamental rights guaranteed under Article 21 of the Constitution of India and therefore, the petitioner is entitled seek an order as

prayed for.

3. Per contra, Mr. C. Mayilvahanarajendran, learned Additional Public Prosecutor appearing for the respondent submitted that there were three

adverse cases, apart from the ground case pending against the detenu According to the learned Additional Public Prosecutor, there was subjective

satisfaction for the detaining authority and that the mandatory procedures have been followed by the respondents while passing the impugned

detention order.

4. It is seen from the impugned detention order passed by the second respondent that a case in Crime No. 229 of 2013 on the file of Thanjavur

Town East Police Station was registered under Sections 147, 148, 341, 323, 295(A), 294(b), 324, 307 and 506(ii) of IPC based on the

occurrence dated 07.04.2013. Subsequently, on 12.04.2013, according to the respondents, the detenu involved in committing another offence

punishable u/s 392 of IPC, for which, a case in Crime No. 247 of 2013 on the file of Thanjavur Town East Police Station was registered.

Similarly, on 17.04.2013, according to the respondents, the detenu involved in another similar incident, whereby, committing an offence punishable

u/s 392 of IPC, for which, a case in Crime No. 263 of 2013 was registered by Thanjavur Town East Police Station.

5. It is an admitted fact that in all the aforesaid adverse cases, the detenu herein was enlarged on bail. However, he was not released on account of

his none furnishing of sureties as per the bail orders. The ground case is that on 03.05.2013 at about 17 hours one Manikandan aged about 28

years appeared before the Thanjavur Town East Police Station and gave a complaint against the detenu . As per the complaint, the detenu along

with one Sadam Hussain, S/o Shake Mohammed, proceeding in a motor bike, weigh-laid the de facto complainant Manikandan threatened him by

showing knife and the detenu took away Rs. 2,000/-from the shirt packet of the de facto complainant. During the occurrence, the de facto

complainant raised his alarming voice and the people nearby the area came to the scene of occurrence. Thereafter, the detenu and the co-accused

showed knife and threatened the public that they would kill, if they come near to them. Based on the aforesaid allegations, a case in Crime No.

297 of 2013 has been filed by the Thanjavur Town East Police Station under

Sections 341, 294(b), 386 and 506(ii) of IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992.

6. Learned counsel appearing for the petitioner submitted that the respondents have not furnished the copies of material papers within 5 days as contemplated u/s 8 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). In this regard, the learned counsel

appearing for the petitioner relied on the decisions reported in Smt. Dharmista Bhagat Vs. State of Karnataka and Another, and Bhupinder Singh

v. Union of India and Others (1987) 2 SCC 234. Referring the decisions rendered in Mehrunissa Vs. State of Maharashtra, and Bhupinder Singh

v. Union of India (supra) the Hon"ble Supreme Court has held that it is imperative that the detaining authority has to serve the grounds of detention,

which include also all relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making

the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an

effective representation to the Advisory Board as well as to the detaining authority. Hence the refusal on the part of the detaining authority to

supply legible copies of the said relevant document to the detenu for making an effective representation would infringe the detenu's right under

Article 22(5) of the Constitution. Accordingly the detention order was set aside by the Hon"ble Apex Court.

7. In Bhupinder Singh v. Union of India and Others (supra) the Hon"ble Supreme Court has held that the detenu therein was denied the

opportunity of making a representation and legible copies of documents relied on by the authorities were not supplied to the detenu and hence,

there was contravention of right guaranteed under Article 21 of the Constitution. Accordingly, it was held that the detenu therein was entitled to be

set at liberty.

8. Learned counsel appearing for the petitioner drew the attention of this Court that though the detention order was passed by the second

respondent on 01.06.2013, the same was furnished only on 06.06.2013, for which, he produced an endorsement available in the booklet served

on the detenu on 06.06.2013. Per contra, the learned Additional Public Prosecutor submitted that as per Section 8 of the Act, copies were properly furnished within 5 days.

9. The learned counsel appearing for the petitioner submitted that legible copies were not furnished. Per contra, the learned Additional Public Prosecutor submitted that only page No. 69 was not legible, however, no such request was made immediately and therefore, it would not be a ground in this Habeas Corpus.

10. The next point for consideration is subjective satisfaction. Learned Additional Public Prosecutor drew the attention of this Court to the decision rendered by the Hon''ble Supreme Court in the case reported in 2012 SCC 699, wherein, certain guidelines have been issued by the Hon''ble Supreme Court. We have perused the typed set of papers. According to the learned Additional Public Prosecutor, guidelines issued by the Hon''ble Supreme Court have been complied with and therefore, according to him, it is not open to the petitioner to argue that there was no subjective satisfaction. However, we are of the view that subjective satisfaction is only a legal satisfaction of the Detaining Authority to pass the detention order as per law. Admittedly, in this case though there are three adverse cases, bail was granted in all the cases, in favour of the detenu , which is not in dispute. Based on the ground case, the detention order was passed by the second respondent herein.

11. In a decision reported in Malleeswari Vs. State Government , this Court has held that delay in supply of copy of detention order and the grounds of detention and connected papers to the detenu is violative of the mandate u/s 8(1) of the said Act and further this Court has held that an order of preventive detention passed on the ground that there is real possibility of the detenu coming out on bail by filing bail application. Accordingly, it was decided based on the grounds it could not be held that there was real possibility of detenu coming out on bail by filing bail application is which is non application of mind, hence, the order is liable to be set aside.

12. The learned Additional Public Prosecutor appearing for the respondents submitted that as per the order passed by the earlier Division Bench of this Court reported in Malleeswari v. State Government, Rep. by its Secretary

to Government, Home, Prohibition and Excise Department and

Another (supra) a copy of the detention order along with the material papers, relied on for having subjective satisfaction, referred in the detention

order, have to be supplied within 5 days. Accordingly, the copy of the detention order and copies of the documents relied on for the subjective

satisfaction were furnished and therefore, the aforesaid decision is not supporting to the case of the respondents.

13. It is relevant to refer Section 2(a) of the Act, which clearly stipulates the object of the Act and as per definition clause of Section 2 of the Act

was enacted to prevent persons engaging in the trade as bootlegger, drug offender, forest offender, goonda, immoral traffic offender, sand

offender, slum grabber, video pirate, acting in any manner which are prejudicial to the maintenance of public order. The detention order is clamped

against the persons, who violated the public order.

14. In the instant case, admittedly, having considered the facts and circumstances, the competent Courts have granted bail in all the adverse cases

and the detention order was passed only based on the ground case. On the reading of the detention order, it is clear that no one was injured and

the allegation is that the detenu and other accused have threatened the de facto complainant one Manikandan with knife and people got afraid of

by the act of the petitioner. However, even as per the averments of the second respondent in the impugned detention order, only based on the

complaint given by the de facto complainant Manikandan, the Inspector of Police/ Sponsoring Authority went to the alleged scene of occurrence.

The averments in the complaint would not show any prima facie threat to the public order, so as to invoke the provisions of the Act and pass the

detention order.

15. As contented by the learned counsel appearing for the petitioner, a perusal of the impugned detention order would show that the impugned

detention order was passed as the petitioner was granted bail and he could not furnish sureties. Further it is pertinent to note that the occurrence

relating to the first adverse case, which was taken place on 07.04.2013. Subsequently, on 12.04.2013, there was occurrence relating to the

second adverse case for registering the case u/s 392 IPC and the third case was registered within few days i.e., on 17.04.2013 against the detenu

for the offence punishable u/s 392 IPC then few days later, the ground case was registered on the alleged occurrence dated 03.05.2013. On the

available records, it is not clear as to how the petitioner was detained on the ground that there was imminent possibility for coming out on bail,

when he could not furnished sureties.

16. On the aforesaid alleged facts and circumstances, how subsequent occurrence dated 03.05.2013 had taken place is also a pertinent question.

In this regard, the respondents have not furnished any details to show whether the detenu was enlarged on bail in committing the subsequent

alleged offence relating to the ground case. As there is no satisfactory explanation for the contradiction with regard to the filing of various cases

relating to various alleged occurrences, one after another. Merely because the detenu got bail in three adverse cases, based on the ground case

without sufficient material the respondent/sponsoring authority sponsored the name of the detenu for preventive detention and the detention order

has been passed mechanically without following the mandatory procedures, as contemplated under the Act.

17. The second respondent without properly considering the material papers available on record passed the order, clamping detention on the

detenu , against mandate of Article 21 of the Constitution of India. On the facts and circumstances, we are of the view that there is no sufficient

material for subjective satisfaction to invoke the Act and detain the person, hence, it could be construed as non application of mind. Hence, we are

of the view that the Habeas Corpus petition has to be allowed to meet the ends of justice. In the result, the Habeas Corpus petition is allowed and

the impugned detention order in P.D. No. 27/2013, dated 01.06.2013 passed by the second respondent is set aside. The detenu, viz., Muthu @

Muthamilselvan, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.