
(2008) 09 MAD CK 0141

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 414 of 2008

Mariammal Thevar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3, 3(1), 3(2)

Citation : (2008) 09 MAD CK 0141

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : A. Jaya Ramachandran, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the mother of the detainee. She challenges the order of preventive detention, dated 04.05.2008, clamped on her daughter by the 2nd respondent branding her as a "Drug Offender" and detaining her u/s 3 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 14/1982).

2. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor.

3. The detention order is questioned on two grounds.

(1) No material was placed before the detaining authority to come to the conclusion that on the date of clamping the order of detention, the detainee was in remand.

(2) The second ground is that the application for bail was opposed by the sponsoring authority on the ground that action is contemplated to detain the

detenue under Tamil Nadu Act 14/1982 and since the sponsoring authority has acted in a pre-determined mind, the detention order is vitiated.

4. As far as ground No.1 is concerned, though the detenue ought to have been produced for extension of remand before the concerned Judge on 25.04.2008, she was not produced through video conferencing due to Network failure and therefore the Special Judge adjourned the matter to 09.05.2008 for extension of remand. From the material papers placed before the detaining authority, there is nothing to indicate as to whether the detenue was produced before the Court on 09.05.2008 for extension of remand. However, in the grounds of detention it is stated that the detenue was arrested on 11.04.2008 and produced before the Judicial Magistrate No. I, Virudhunagar, on 11.04.2008 and remanded to judicial custody upto 25.04.2008 and lodged in the Central Prison, Tirucirappalli. It is further stated that on 25.04.2008, she was produced in the Court of Special Judge E.C. Act Cases, Pudukkottai and on extension of remand upto 09.05.2008, she was again taken to judicial custody and lodged in Central Prison (Woman), Tiruchi. Apparently, the said statement of the detaining authority is not in conformity with the documents placed before him, which finds a place at page No.129 of the booklet, where there was no order extending the remanded period of detenue on 25.04.2008. The said discrepancy has not been clarified by the detaining authority. Hence, the detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority.

5. The next contention is that the detention order is also liable to be quashed on the ground of pre-determination of mind on the part of the sponsoring authority to detain the detenue 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 (in short "Tamil Nadu Act 14/1982").

6. Learned Counsel appearing for the petitioner would contend that the application for bail was opposed by the sponsoring authority on the ground that action is contemplated to detain the detenue under Tamil Nadu Act 14/1982 and since the sponsoring authority has acted in a pre-determined mind to detain the detenue, the detention order is vitiated. In support of the said submission, the learned Counsel would rely upon two judgments of this Court reported in (i) 2005 M.L.J. (Cri.) 1004 Sarala v. The Commissioner of Police, Greater Chennai and Anr.; and (ii) (2008) 1 MLJ (Cri.) 953 Chinnathambi v. State of Tamil Nadu.

7. We have gone through both the judgments. In both the judgments, this Court had taken the view that in the event the sponsoring authority had represented before the court while opposing bail that the detenus are likely to be detained under Tamil Nadu Act 14/1982, it would show the pre-determined mind on the part of the sponsoring authority, which in the opinion of the Court, would vitiate the orders of detention.

8. Section 3 of the Tamil Nadu Act 14/1982 reads as under:

(1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest-offender or goonda or immoral traffic offender or slum-grabber or video pirate or sand offender that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this Sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time, by any period not exceeding three months at any one time.

(3) When any order is made under this Section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

9. Sub-Section (1) of Section 3 of the Act empowers the State Government to direct a person to be detained in order to prevent such person from acting in any manner prejudicial to the maintenance of public order. Sub-section (2) of Section 3 of the Act empowers the State Government to delegate the power under Sub-section (1) of Section 3 to be also exercised by District Magistrate or Commissioner of Police having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of the concerned officers. Only by virtue of the said delegation of power, either the District Magistrate/District Collector or the Commissioner of Police would derive power to pass detention orders.

10. In view of the above specific provisions, the satisfaction of the detaining authority to pass the detention order is considered to be the primary importance, with great latitude, in exercise of its discretion. The detaining authority alone could act on any material and on any information that it may have before it. Only to enable the detaining authority to apply his mind as to whether there exists any compelling necessity to pass detention order, the affidavit of the sponsoring authority with relevant materials are placed before the detaining authority.

11. The sponsoring authority is an officer having come to know of the prejudicial activities of an individual, which ultimately amount to disturbing the public order,

would be entitled only to recommend to the detaining authority for his consideration as to whether detention order could be passed or not. Passing a detention order is not an automatic exercise of power by the detaining authority immediately on receipt of the affidavit of the sponsoring authority recommending detention of an individual under the preventive detention laws. The detaining authority should independently apply his mind not only to the fact as to whether the act/acts of the individual would amount to prejudicial to the public order or not. The further consideration of the detaining authority is to consider (i) whether the said individual is in remand on the date of detention order and whether he continues to be in remand; (ii) whether there is possibility of the individual filing bail application and even if such application is filed, whether there is real possibility of getting bail. The consideration as to the possibility of filing bail application and coming out on bail is only to ensure that in the event of the person allowed to go free, he will indulge in similar activities which are prejudicial to the public order. Further, the detaining authority is also entrusted with the prime duty of considering as to whether there exists compelling necessity to pass detention order. The detention to pass order is solely on the application of mind of the detaining authority as contained in the grounds of detention with supported materials. Except the sponsoring authority sends his affidavit recommending the detention, he has no power to adjudicate on the question as to whether there should be any detention order clamped on a particular individual. In the absence of such power conferred under the Act, merely because the sponsoring authority has opposed the bail application on the ground that detention order is being contemplated against the individual, it cannot be held that such decision of the sponsoring authority to recommend to the detaining authority for passing detention order would be considered as a final decision for clamping the detention order.

12. In view of our discussion, with great respect, we are not inclined to take the same view taken by this Court in the above two judgments.

13. The issue in question is of great importance as it comes frequently before the Court for consideration and hence the law on the subject should be settled by Full Bench. Therefore, we refer the following question for consideration by the Full Bench.

Whether a detention order is vitiated on the ground that the Sponsoring Authority while opposing bail application had stated as to the contemplation by invoking preventive detention laws against the individual and thereby he had acted in predetermined mind?

14. In these circumstances, we direct the Registry to place the papers before the Hon"ble The Chief Justice for appropriate orders for placing the matter before a Full Bench.

15. In the result, the habeas corpus petition is allowed and the impugned order of detention in Cr.M.P. No. 13/2008, dated 04.05.2008, passed by the 2nd

respondent is quashed on the first ground of challenge. The detainee is directed to be released forthwith, unless her presence is otherwise required, in accordance with law, in connection with any other case.