
(2014) 09 MAD CK 0217
In the Madras High Court
Case No : H.C.P. No. 1383/2014

Mohammad Kabhi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 336, 341, 380, 392

Citation : (2014) 09 MAD CK 0217

Hon'ble Judges : S. Rajendran, J;P.N. Prakash, J

Bench : Division Bench

Judgement

S. Rajeswaran, J.—Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No. 1780/2013 dated 01.12.2013, whereby the detenu/the petitioner herein, was ordered to be detained under the provisions 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) branding him as a "GOONDA".

2. As per the grounds of detention dated 01.12.2013, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse case:

Sl No.

Name of the Police station and Crime No.

Section of law

1

S-14, Peerankaranai P.S Cr.No.1207/2013

457, 380 IPC

2

S-15 Selaiyur PS Cr.No.1572/2013

457, 511 IPC

3

S-14, Peerankaranai P.S Cr.No.1445/2013

457, 511 IPC

(ii) Ground Case:

Sl No.

Name of the Police station and Crime No.

Section of law

1

S-14, Peerankaranai P.S Cr.No.1447/2013

341, 323, 294(b), 336, 427, 392, 397, 506(ii) IPC

3. Though many grounds have been raised in the petition, Mr. P. Pugalenth, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the 2nd adverse case [Cr. No. 1572/2013] registered by S-15, Selaiyur Police Station and also in the ground case in Cr. No. 1447/2013 registered by S-14 Peerankaranai Police Station and the detenu has not moved any bail applications in the said cases as on the date of the passing of the detention order. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail applications in the 2nd adverse case and in the ground case. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail applications in 2nd adverse case as well as in the ground case. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude/to apprehend that the detenu is likely to get bail in the ground case and in the 2nd adverse case and there is imminent possibility of the detenu coming out on bail in the said cases. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the 2nd adverse case and in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he

relies on the judgments of the Hon''ble Apex Court reported in [a] T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, ; [b] Velumurugan @ Velu Vs. The Commissioner of Police and Another, and [c] Huidrom Konungjao Singh Vs. State of Manipur and Others, .

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. We have heard the learned counsel for both sides with regard to the facts and citation.

7. Before advertng to the arguments of the counsel for both sides, we would like to reproduce the relevant portion of the grounds of the detention order, viz., paragraph 4, on which much reliance has been placed by the learned counsel appearing for the petitioner:

"4. I am also aware that Thiru. Mohammad Kabhi who was remanded in S-14, Peerkankaranai P.S. Cr. No's. 1207/2013, 1445/2013 and 1447/2013 and S-15, Selaiyur P.S. Cr. No. 1577/2013 and he has filed bail applications for S-14, Peerkankaranai P.S. Cr. Nos. 1207/2013 and 1445/2013 before the court of Judicial Magistrate, Tambaram, Chennai in CrI. M.P. Nos. 17249/2013 and 17251/2013 and the same were dismissed on 25.11.2013, he has not filed any bail petition for S-14 Peerkankaranai P.S. Cr. No. 1447/2013 and S-15 Selaiyur P.S. Cr. No. 1572/2013 so far. The sponsoring authority stated that Thiru Mohammad Kabhi's relatives are taking action to take him out on bail in S-14 Peerkankaranai P.S. Cr. Nos. 1207/2013 and 1445/2013 and S-14 Peerkankaranai P.S. Cr. No. 1447/2013 and S-15 Selaiyur P.S. Cr. No. 1572/2013 by filing another and fresh bail applications before the appropriate Court. In a similar case referred at P-6 Kodungaiyur P.S. Cr. No. 200/2009 u/s. 457, 380 I.P.C., bail was granted by the 14th Metropolitan Court, Egmore, Chennai in CrI. M.P. No. 674/2009. In a similar case, registered at M-8, Sathangadu P.S. Cr. No. 272/2011, u/s. 341, 294(b), 336, 392, 397 and 506(ii) IPC bail was granted to the accused Kanagasabapathy @ Pradeep and Raman by the Hon''ble High Court, Chennai in CrI. O.P. No. 15963/2011 on 13.10.2011. Hence, I infer that there is real possibility of his coming out on bail in S-14, Peerkankaranai P.S. Cr. Nos. 1207/2013 and 1445/2013 and S-14 Peerkankaranai P.S. Cr. No. 1447/2013 and S-15 Selaiyur P.S. Cr. No. 1572/2013 by filing another and fresh bail applications before the appropriate Court, since in similarly placed cases bails are granted by court after a lapse of time. If he comes out on bail, he will further indulge in such activities in future, which will be prejudicial to the maintenance of public order....."

8. As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr. No. 1447/2013] and in the 2nd adverse case

[Cr. No. 1572/2013] and he has not filed any bail applications in the said 2nd adverse case as well as in the ground case as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail application in the said cases is not sufficient to pass an order of detention. Excepting recording a statement that the relatives of the detenu are taking steps to file bail applications, no other material are shown as to the steps taken to file bail application in the 2nd adverse case and in the ground case. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case as well as in the 2nd adverse case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground alone the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

9. In this connection it is useful to refer the judgment of the Hon''ble Apex Court relied on by the learned counsel for the petitioner.

[a] In T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , wherein the Hon''ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

[b] In Velumurugan @ Velu Vs. The Commissioner of Police and Another, , it has been held as follows:

"3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an

essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c] In *Huidrom Konungjao Singh Vs. State of Manipur and Others*, which reads thus:-

12. In *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , this Court while dealing with the issue held:

A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground.

14.....Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

10. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

P.N. Prakash, J.

11. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

12. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in Memo No. 1780/2013 dated 01.12.2013 passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.