

(1992) 12 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 7718 of 1992

Muthu alias Muthu Mohamed

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) LW(Cri) 191

Hon'ble Judges : K.M. Natarajan, J; Ali Mohammed, J

Bench : Division Bench

Advocate : K. Doraisamy and Mrs. Muthumani Doraisamy, for the Appellant; S. Shanmughavelayutham, Additional Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition filed by the detenu himself under Article 226 of the Constitution of India is for the issue of writ of

habeas corpus to quash the order of detention dated 13/05/1992 and set him at liberty. The impugned order of detention was passed by the

Respondent, viz., Secretary to Government of Tamil Nadu, in exercise of the powers conferred by sub-S.(1) of Section 3 of the Prevention of

Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Central Act 46 of 1988) with a view to preventing him from possession

and sale of Narcotic Drugs (Ganja)

2. The brief facts which led to the passing of impugned order, are stated as follows: On 17/08/1991 at 10.30 hours, the detenu was found in

possession of 8.200 kilograms of Ganja in a gunny bag at door No. 10. 10th Cross Rahamaniapuram, Thillai Nagar Trichy-18 along with one

Rabiya and Umma Kabiba, who were in possession of 24.500 Kilograms, 14.600 kilograms and 6.900 kilograms of Ganja respectively. Ganja

sale proceeds of Rs. 3,100/- and Rs. 9,400/- were also recovered from Rabiya and Umma Kabiba respectively. Thiru Kalidasan, Sub Inspector

of Police, Narcotic Intelligence Bureau, Crime Branch, C.I.D. Madras arrested the detenu and seized Ganja and selling cash in the house search

list attested by witnesses. Thereupon, they were taken to Thillai Nagar Police Station with the seized Ganja along with the other three accused with

their contrabands at 14-00 hours and a case against them was registered in Thillai Nagar Police Station in Crime No. 136 of 1991 u/s 20(b)(i) of

Narcotic Drugs and Phycotropic Substances Act, 1985. The detenu along with the other accused were remanded before the Judicial Magistrate

V, Trichy and lodged in the Central Prison, Trichy and subsequently released on bail.

3. On 4.4.1992, at about 3 p.m., in Rasipuram Town limits on Salem-Attur Road in front of Rasipuram Old Bus Stand, way-in-gate, the Inspector

of Police, Narcotic Intelligence Bureau, Crime Branch, C.I.D., Salem, on information conducted raid and found the detenu was in possession of a

fibre suitcase containing Ganja, a Narcotic Drug, weighing 13 kilograms with the suit case and 2 kilograms of Ganja in a rexine bag for sale or for

preparation of sale, along with one Enkatamallu of Andhra Pradesh, with 6,500 Kilograms of Ganja in a white polythene bag. The contraband

Ganja from the detenu's possession and from the possession of the other accused were seized in the presence of witnesses. Thereupon, they were

arrested and a case was registered in Crime No. 26 of 1992 u/s 20(b)(i) of Narcotic Drugs and Psychotrapic Substances Act, 1985 and

investigated. Then, the papers were sent to the Detaining Authority and after drawing subjective satisfaction, the impugned order of detention was

passed.

4. Though the learned Counsel for the Petitioner challenged the order on various grounds, he confined his argument to the following grounds:

(i) The detention order reads that the detenu is in remand, but the order is marked to the Inspector of Police for service to his native address.

There is a clear non-application of mind on the part of the Detaining Authority with regard to the act whether the detenu was inside or outside at

the time of passing the order.

(ii) The documents given to the detenu are highly illegible and the detenu was

prevented from making effective representation, particularly pages 1 to 7, 15 to 20, 27 to 30, 39, 47, 48 and 55 to the end are highly illegible.

(iii) In the counter-affidavit filed by the Respondent, the order passed in the bail application in respect of the adverse case, Crime No. 26 of 1992

is very much relied on for arriving at a subjective satisfaction and it has been stated that it was brought to the notice of the Detaining Authority by

the Sponsoring Authority and on the basis of the order passed in the bail application in respect of the adverse case, the impugned order was

passed and the said document is a vital and material document for drawings subjective satisfaction and as such, the failure to furnish the copy of the

same will vitiate the order of detention.

5. Now, let us consider these three points in seriatim.

6. As regards the first point, the Petitioner has taken it as ground No. 3 in the additional affidavit filed in H.C.M.P. 60 of 1992. It is to be noted

that though the petition was allowed and additional grounds were received, no counter has been filed and the averments stated in the ground stand

unrebutted. However, learned Counsel for the Petitioner drew our attention to the grounds of detention served on the detenu wherein it is stated in

the body that the detenu was arrested and detained in Central Prison and the bail application filed by him was also dismissed and he is in judicial

custody at the time when the order was passed. But, it has been addressed to his native address and a copy has been marked to the Inspector for

effecting service to his native address as detenu Muthu alias Muthu Muhamad, S/o. Pachiappa Konar, 7/72, Yadgar Street, Kattadasampatti,

Rasipuram, Salem Taluk. The learned Counsel after inviting our attention to this fact, submitted that this is a clear case of non-application of mind

on the part of the Detaining Authority with regard to the whereabouts of the detenu at the time when the impugned order was passed. The

Detaining Authority is not definite as to whether the detenu was inside or he was outside while passing the order and this clearly shows that there is

non application of mind on the part of the Detaining Authority on this vital aspect, as this is relevant for deciding the compelling necessity to detain

the detenu. The learned Additional Public Prosecutor fairly submitted that it has been so addressed to his native address, while actually, he was

detained in Central Prison and he is unable to rebut the said contention. In this

connection, learned Counsel for the Petitioner drew our attention to decision of this Court reported in Anbu v. Government of Tamil Nadu 1987 L.W. (Crl.) 209, in which it has been held as follows:

It is clear that the detaining authority at the time of passing the impugned order, has stated in one place that the detenu was confined as remand

prisoner in the Sub Jail, Chengalpattu at the time of passing the order, and in the succeeding sub-paragraph has stated that the detenu was on bail

at the time the order of detention was passed. These contradictory versions in the detention order clearly indicate that there was a total non

application of mind on the part of the detaining authority at the time of passing the order, to the fact as to whether the detenu was in jail or on bail

at that time, and we hold that this non-application of mind vitiates the order.

Applying the ratio to the facts of this case, we have no hesitation in holding that there is a clear non-application of mind on the part of the Detaining

Authority with regard to this vital aspect, viz., as to whether the detenu was outside or inside at the time when the impugned order was passed and

as such, the impugned order is vitiated on this ground also.

7. As regards the second contention, learned council has taken it as ground No. 4 in the additional ground which reads as follows:

The documents given to the detenu are highly illegible and the detenu is prevented from making effective representation particularly pages 4 to 7,

15 to 20, 27 to 30, 47, 48, 55 to the end are highly illegible.

No counter-affidavit also has been filed challenging the said ground. The said ground also stands un rebutted. In this connection learned Counsel

also produced before us the copies of the records which had been served on the detenu and we have gone through the copies and we find that

page 20 report of the Chemical Analyst, which is very much relied on by the Detaining Authority, is illegible and not readable and some of the

other pages are also not readable and legible. Learned Counsel vehemently argued that when the copy furnished to the detenu itself is not legible

and readable, that alone is sufficient to vitiate the order, as the Petitioner is deprived of making effective representation against the impugned order

and he could further submit that furnishing illegible copy is as good as not supplying the copy and as such, it is violative of Article 22(5) of the

Constitution of India. In this connection learned Counsel also drew our attention

to a decision reported in *Panjali v. Dist. Magistrate & Collector*

North Arcot 1992 L.W. (Crl.) 497 : 1993 L.W. (Crl.) 17 to which one of us was a party, wherein this Court in similar circumstances held as

follows:

It is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents, which had been

considered informing 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.

In this case, even according to the learned Additional Public Prosecutor, the documents in question are vital documents and the detaining authority

considered and relied on them while arriving at the subjective satisfaction. We find that those documents supplied to the detenu are not legible and

readable. Hence it can be held that the detenu was not able to make an effective representation against the impugned order. The supply of illegible

and unreadable documents along with the grounds of detention would amount to non-supply of documents as well as held in the above decisions.

We have no hesitation in holding that by the supply of illegible and unreadable material documents, the detenu was deprived of taking effective

representation and as such, the impugned order is relative of Article 22(5) of the Constitution of India and hence it is vitiated.

Learned Public Prosecutor fairly conceded that the copy of the report of Public Analyst furnished to the detenu is illegible and it is a material

document relied upon by detaining authority. Applying the ratio to the facts of this case and in view of the fact that the very vital document

admittedly relied on and referred to in the grounds of detention is itself illegible and unreadable, we have no hesitation in holding that the impugned

order is vitiated on this ground.

8. The last and third point urged by the learned Counsel for the Petitioner is that the order passed in the bail application in the adverse case is very

much relied on by the Detaining Authority in passing the impugned order and copies of the said documents were not furnished to the detenu and

the failure to furnish the copy to the detenu also deprived the Petitioner from

making effective representation against the impugned order and as such, it is violative of Article 22 of the Constitution of India. In this connection, learned Counsel drew our attention to the counter-affidavit filed by the Respondent in paragraph No. 3 which reads as follows:

The fact about the release of the detenu on bail in the above said crime number was brought to my notice by the sponsoring authority. I was aware of the fact that the detenu was on bail in the abovesaid case. The abovesaid crime is an adverse case showing the antecedent character of the detenu and is proximate to the order of detention passed with reference to the ground cast, namely, Crime No. 26/92. The adverse cases only show the antecedent character of the detenu and is proximate to the order of detention.

In, paragraph 4, it is also averred as follows:

The order of detention was passed with reference to the ground case. The adverse case only shows the antecedent character of the detenu and is proximate to the order of detention passed with reference to the ground case.

Then, in paragraph 5, it is averred as follows:

Since, in the adverse case, the detenu has been released on bail, there is every possibility of the detenu moving the appropriate court sometime or other and get himself enlarged on bail. In such cases, bails are granted after case time and if the detenu is left to remain at large, he will indulge in illicit traffic in narcotic drugs and that further recourse to normal criminal law would not have the desired effect of effectively preventing him from so acting in future. Hence I am satisfied that it is necessary to detain him under the Act with a view to preventing him from engaging in the possession of ganja, a narcotic drug, as stated in the grounds of detention.

These statements clearly show that the order passed in the bail application in the adverse case is very much relied on by the Detaining Authority for drawing subjective satisfaction. Learned Public Prosecutor fairly submitted that there is no reference at all about the order passed in the bail application in the affidavit of the Sponsoring Authority. He also fairly submitted that the bail applications and the order passed thereon in the adverse case in Crime No. 136 of 1991 were not furnished to the detenu. In the circumstances, learned counsel vehemently argued that the failure

to furnish copy of the vital documents deprives the detenu from making effective representation and as such, violative of Article 22(5) of the

Constitution of India. He also invited our attention to a decision of this Court reported in Palaniammal v. The Collector and District Magistrate,

Coimbatore 1988 L.W. (Crl.) 477 wherein this Court held as follows:

In as much as the bail application and the bail order which have been relied on by the detaining authority have not been furnished to the detenu, the

order of detention cannot stand and has to be quashed.

Applying the ratio to the facts of this case, we have no hesitation in holding that the impugned order is vitiated on this ground. Thus in view of our

findings on the three points the impugned order is vitiated and is liable to be quashed.

9. In the result, the writ petition is allowed. The impugned order is hereby quashed and the detenu is directed to be set at liberty forthwith, unless

he is required in connection with any other case.