
(2011) 08 MAD CK 0533
In the Madras High Court
Case No : HCP (MD) No. 282 of 2011

Muthulakshmi

APPELLANT

Vs

The District Collector and District Magistrate, The Secretary
to Government, Home, Prohibition and Excise Department
and The Inspector of Police, Nanguneri Police Station

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2012) 1 MLJ 4

Hon'ble Judges : P.P.S. Janarthana Raja, J; Aruna Jagadeesan, J

Bench : Division Bench

Advocate : N. Mohideen Basha, for the Appellant; P. Jyothi, APP, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—The Petitioner is the wife of the detenu. The Petitioner has come forward with this Habeas Corpus Petition, seeking for the relief of quashing the impugned detention order dated 23.02.2011, slapped on her husband as "Goonda" 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 14/1982).

2. Mr. N.Mohideen Basha, the learned Counsel for the Petitioner would mainly contend that the impugned order of detention was passed even without mentioning that there is "imminent possibility" or "real possibility" or "very likely" or "most likely" for the detenu to come out on bail. It is contended by the learned Counsel for the Petitioner that without any subjective satisfaction and without any cogent material that the detenu is likely to be released on bail, the impugned detention order was passed and hence, the same is vitiated.

3. Per contra, Mr. P.Jyothi, the learned Additional Public Prosecutor would submit

that there is No. illegality or infirmity in the impugned order of detention. It is contended that the detaining authority has observed that since the bail petitions filed by the detenu in Cr.MP. No. 1621/2011 before the Judicial Magistrate, Nanguneri and in Cr.MP. No. 729/2001 before the District Sessions Court, Tirunelveli are pending, there is possibility of the detenu getting bail and that if he comes out on bail, he would further indulge in such activities in future, which will be prejudicial to the maintenance of the public order and hence, there is a compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982 and the detaining authority had taken into consideration all the relevant factors to arrive at subjective satisfaction at the time of passing the impugned order of detention and as such, the detaining authority rightly passed the detention order.

4. The perusal of the impugned order of detention would reveal that there is absolutely No. specific mentioning to the effect that there is "imminent possibility" or "real possibility" or "very likely" or "most likely" for the detenu to come out on bail. It is also relevant to note that the detaining authority has stated in paragraph No. 6 of the impugned detention order as hereunder:

I am also aware that Thiru.Murugan filed a bail petition before the Judicial Magistrate, Nanguneri in Cr.MP. No. 1621/2011 on 17.2.2011 in Moolaikaripatti Police Station (Cr. No. 08/2011) and the bail petition is yet to be disposed. I am aware that he is in remand in Moontradaipu Police Station Crime Number 12/2001 and in this case he filed a bail petition before the District Sessions Court, Tirunelveli in Cr.MP. No. 729/2001 on 18.2.2011 and the bail petition is yet to be disposed of. In order to restrict him from indulging activities in future, which will be prejudicial to the maintenance of public order, it is necessary that he has to be kept in judicial custody. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of the public order. On the materials placed before me, I am satisfied that Thiru.Murugan is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.

5. The above finding of the detaining authority is based on mere surmises and conjectures. Admittedly, the the bail applications filed by the detenu are pending and No. order has been passed on the said bail applications. But, the detaining authority without any cogent material available on record has arrived at the conclusion that he will indulge in such activities, which are prejudicial to the maintenance of public order. In the absence of any materials on record, on the basis of which, the detaining authority could be satisfied that the detenu was likely to be released on bail, the mere ipse-dixit of the detaining authority is not sufficient to sustain the order of detention.

6. At this juncture, it is relevant to refer the decision of the Hon"ble Apex Court

in T.V.Saravanan alias S.A.R.Prasanna Venkatachariar Chaturvedi v. State, through Secretary and Anr. reported in 2006 (1) MLJ (CrI) 539. The Hon"ble Apex court in the said decision held as hereunder:

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.

7. In Abdul Sathar Ibrahim Mani v. Union of India (AIR-1991-SC-2261), it is held as follows:

Where the detenu was in custody at the time of passing an order of detention what is strictly required is whether the detaining authority was aware of the fact that the detenu was in custody, and if so was there any material to show that there were compelling reasons to order detention in spite of his being in custody. These aspects assume importance because of the fact that a person who is already in custody is disabled from indulging in any prejudicial activities and as such the detention order may not normally be necessary. Therefore, the law requires that these two tests have to be satisfied in the case of such detention of a person in custody.

8. In yet another decision of the Honourable Supreme Court reported in Ramesh Yadav v. District Magistrate, Etah and Ors. (AIR-1986-SC-315), the Honourable Supreme Court has observed as follows:

Where the order of detention was passed because the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area, the same was not proper. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the Act should not ordinarily be passed.

9. The principles laid down in the decisions cited supra are squarely applicable to the facts of the present case. In this case also, the detaining authority in the absence of any cogent material available on record has inferred that the detenu would be released on bail and if he is released on bail, he would indulge in such activities in future, which are prejudicial to the maintenance of public order. There must be cogent material before passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the

available material on record and must not be the ipse-dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail application or the pendency of the bail application filed by the detenu is not a cogent material and detention order based on such material is liable to be quashed. The detaining authority before passing the detention order must satisfy themselves that there is likelihood of the detenu being released on bail and that satisfaction ought to be reached on cogent material.

10. Yet another contention was made by the learned Counsel for the Petitioner that u/s 10 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), the State Government should, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order. According to the learned Counsel for the Petitioner, the Government did not place the detention order before the Advisory Board as contemplated u/s 10 of the Act and thus, there was a breach of Section 10 of the Act. Therefore, he would submit that the detention of the Petitioner is illegal.

11. Section 10 of the Act reads thus:

10. Reference to Advisory Board: In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under Sub-section (3) of Section 3.

12. There can be No. doubt that the provisions u/s 10 of the

Act are mandatory. This Court as well as the Honourable Supreme Court has, on more than one occasion, indicated in unmistakable terms that the safeguard available to the detenu without trial is what is guaranteed to him under Article 22 sub Clause (5) of the Constitution. The time schedule indicated in the Act and the screening by the Advisory Board are in answer to this requirement. The Honourable Supreme Court in Khudi Ram Das v. State of West Bengal (AIR-1975-SC-550) said:

The constitutional imperatives enacted in this article 22 are two-fold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person

and thereby drown his right of personal liberty in the name of public good and social security.

13. Section 10 of the Act provides that the State Government has the obligation to cause the papers relating to the detention to be placed along with the representation, if made, within three weeks from the date of detention before the Advisory Board. Where a representation is not made with regard to the detention, the papers without the representation have to be placed before the Advisory Board within the time prescribed. In case, a representation is made with reasonable time, the same has also to be promptly attended to and has to be placed before the Advisory Board. When the reference is received and the grounds of detention are available, the Advisory Board proceeds to fix the date of hearing for consideration of justification of the detention.

14. The procedure of the Advisory Board contained in Section 11 of the Act indicates that the Board has to consider the materials placed before it and is entitled to call for such opinion as it may deem necessary from the State Government or from any person concerned and after hearing the detenu, if he wants to be heard in person, has to report to the appropriate Government within seven weeks from the date of detention in the manner indicated in the remaining Sub-sections of that Section. While dealing with this aspect of the matter, it is to be borne in mind that Section 10 requires the reference to be placed before the Board within three weeks and Section 11 requires the report to be submitted to the Government within seven weeks. The legislative scheme in fixing the limit of three weeks in Section 10 and further limit of seven weeks in Section 7 allows at least four weeks" time to the Board to deal with the matter.

15. In the instant case, 15.3.2011 was the last date of expiry of three weeks from the date of the detention, but the Advisory Board has met on 30.3.2011 as per the averment made in the counter. There has been an assertion on behalf of the State Government by the learned Additional Public Prosecutor that the papers were placed before the Advisory Board only on 30.3.2011. In the face of above facts, the detention becomes illegal. In the light of the above said principles laid down by the Honourable Supreme Court, the impugned order of detention is vitiated and the same is liable to be quashed.

16. In the result, this Habeas Corpus Petition is allowed and the impugned detention order passed by the 1st Respondent in MHS.Confdl. No. 07/2011 dated 23.02.2011 is hereby quashed and the detenu Murugan is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.