
(2009) 02 MAD CK 0208
In the Madras High Court
Case No : H.C.P. (MD) No. 738 of 2008

P. Mallika

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 02 MAD CK 0208

Hon'ble Judges : P. Murgesen, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; D. Issaq Manuel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—This Habeas Corpus Petition has been filed by the mother of the detenu for the production and release of her son Veerapandi @ Pathripandi, who has been detained u/s 3(2) of the Tamil Nadu Act 14 of 1982 branding him as a "Goonda" by order dated 28.02.2008.

2. There were as many as five adverse cases against him, apart from the ground case. The first adverse case was in Crime No. 1242 of 2004 registered in B3-Teppakulam Police Station for offences u/s 394, 402 and 395 r/w 397 IPC. The said crime was registered for the alleged involvement of having waylaid one Arumugam on 22.09.2004 at 21.15 hours and snatched his 3 sovereign gold chain as well as a Motorola cell phone.

3. The second adverse case was registered in the X1-Silaiman Police Station in Crime No. 181 of 2005 for offences under Sections 147, 148, 302 and 506(ii) IPC said to have been committed on 14.03.2005. He was stated to have murdered one Mahalingam, along with his associates. The said crime was tried by the Principal Sessions Judge, Madurai in S.C. No. 126 of 2007 and was convicted for life apart from imposition of a fine of Rs. 1,000/- and in default to undergo 6

months R.I.

4. The third adverse case in Crime No. 1421 of 2005 was registered in B3-Teppakulam Police Station for offences under Sections 147, 148, 307 and 506(ii) IPC alleged to have been committed on 30.08.2005 again for attempt to murder one Muthuramalingam by the detenu and his associates.

5. The fourth adverse case was in Crime No. 709 of 2006 registered in B3-Teppakulam Police Station for offences under Sections 387 and 506(ii) IPC alleged to have been committed on 10.06.2006 in which the detenu waylaid one Anandaraj of Anupanadi with a knife, and demanded money for his expenses.

6. In all the above four adverse cases, the detenu was enlarged on bail. The fifth adverse case was registered in Crime No. 991 of 2007 in the same B3-Teppakulam Police Station for offences under Sections 392 r/w 397 IPC alleged to have been committed on 22.12.2007 morning at about 11.00 hours, in which he is stated to have snatched away the Nokia cell phone of one Kanmani Radha, D/o Duraikannu of Mela Anupanadi.

7. In the ground case, it is alleged that on 23.12.2007 at about 19.00 hours, the detenu along with his associates threatened one Vairamani, resident of Ariyapatti, Tiruparankundram and demanded money for consumption of brandy and when the said Vairamani replied that he had no money, the detenu placed the knife on the stomach of Vairamani, others held the victim and thereafter, robbed a sum of Rs. 500/- from the shirt pocket of Vairamani, while one of his associates robbed Rs. 300/- from one Murugan, friend of Vairamani. The crime was registered based on the complaint of Vairamani in the B3-Teppakulam Police Station in Crime No. 995 of 2007 for offences under Sections 392 r/w 397 and 506(ii) IPC, on 23.12.2007.

8. Assailing the order of detention, the petitioner herself appeared in this Court and submitted her written submissions. In the written submissions, the petitioner has raised as many as five grounds. According to the petitioner, the detenu was taken into illegal custody on 19.12.2007 itself and was falsely implicated in Crime Nos. 991 and 995 of 2007 and that the arrest was falsely shown as 23.12.2007. It is the contention of the petitioner that such fact was brought to the notice of the first respondent-State Government in her representation dated 21.08.2008, but the same was not dealt with by the State Government, in the Rejection Order dated 16.09.2008. It is therefore, contended that the order of detention is liable to be set aside on this ground.

9. It is then contended that, though in the Detention Order it is stated that there was every likelihood of the detenu coming out on bail in the ground case as well as the last of the adverse cases, for stating so, there was no acceptable material, inasmuch, as there was no bail application pending as on that date at the instance of the detenu. It is therefore, contended that there was total lack of application of mind as well as the material to support the impugned order of detention and consequently the order is liable to be set aside.

10. The petitioner, then contended that there were discrepancies in referring to the registration of the F.I.R. and the arrest of the detenu as is shown in the booklet at Pages 166, 170 and 196 which would only go to show that the alleged involvement of the detenu in the offences alleged to have taken place on 23.12.2007 was not true. It is therefore contended that on this ground also, the Detention Order is liable to be set aside.

11. It is then contended that the judgment in S.C. No. 126 of 2007 relating to the third adverse case was one of the relied upon document and a copy of the same was not furnished to the detenu and thereby, he was deprived of the valuable right from making an effective representation. It is also contended that when the said grievance was specifically raised in the representation dated 21.08.2008, the State Government failed to deal with such grievance of the petitioner which only shows total non-application of mind and also violation of the rights of the detenu, detrimental to the constitutional protection provided under Article 21 of the Constitution. The petitioner therefore contended that such an act of the respondents would also vitiate the order of detention. It was then contended that the impugned order of detention dated 28.02.2008 stated to have been passed u/s 3(1) of the Tamil Nadu Act 14 of 1982, which power is exercisable only by the first respondent and not by the Detaining Authority and therefore on this ground also, the Detention Order is liable to be set aside.

12. Lastly it was contended that there was considerable delay in the disposal of the representation dated 21.08.2008 and consequently the order of detention is liable to be set aside.

13. In support of her submissions, the petitioner relied upon the decisions reported in (2008) 2 MLJ (CrI) 1571, AIR 1986 SC 2090, (2008) 2 MLJ (CrI) 1071, 1994 SCC (Cri) 354 and 1999 SCC (Cri) 93.

14. Mr.Issaq Manuel, learned Additional Public Prosecutor, in his submissions contended that there was no delay in the disposal of the representation since the in-between days were holidays and therefore on that ground, the order of detention cannot be interfered with. Learned Additional Public Prosecutor also contended that, in the Detention Order, reference has been made to Section 3(1) only in the context of G.O. which approved the order of detention passed u/s 3(2) and therefore, the said contention of the petitioner cannot be accepted.

15. As far as non-furnishing of judgment copy in S.C. No. 126 of 2007, the learned Additional Public Prosecutor, by referring to the copies of diary entries furnished to the detenu, contended that such copies disclose the conviction and sentences imposed on the detenu and therefore the non-furnishing of the judgment would not vitiate the order of detention. As far as the recording of the timing as to the arrest and registration of ground case, the learned Additional Public Prosecutor contended that it was a minor mistake and therefore it should be ignored. As regards the apprehension expressed by the Detaining Authority that the detenu coming out on bail, the learned Additional Public Prosecutor

contended that when, for serious offences involved in by the detenu falling under Sections 302, 307 and 506(ii) IPC, the detenu was enlarged on bail and such factors were on record before the Detaining Authority and the Detaining Authority has specifically mentioned in the order of detention about the materials relied upon by him which included those factors, it cannot be held that there was non-application of mind on the part of the Detaining Authority in passing the order of detention.

16. As far as the non-consideration of the allegation that the detenu was taken into illegal custody on 19.12.2007, the learned Additional Public Prosecutor fairly stated that the said factor has not been specifically referred to, in the rejection order dated 16.09.2008.

17. Having considered the various submissions of the petitioner, as well as, the contentions of the learned Additional Public Prosecutor, we find that the order of detention is vitiated for more than one reason. As rightly pointed out by the petitioner, in her representation dated 21.08.2008, she has specifically alleged that the detenu was taken into illegal custody on 19.12.2007 itself and was falsely implicated in Crime Nos. 991 and 995 of 2007 by the B3-Teppakulam Police Station. Unfortunately, while rejecting the said representation of the petitioner, the first respondent has not even referred to the said averment in its rejection order dated 16.09.2008. In this context, the decision relied upon by the petitioner reported in (2008) 2 MLJ (Crl) 1571 in the case of Jakkulin v. State of Tamil Nadu, fully supports her stand. The ratio of the said decision, as reported in the above case makes it clear that when a specific allegation has been made in the representation, as regards the illegal arrest of the detenu and that the same was not considered by the Government, such failure to consider a vital aspect as to the date of arrest, would vitiate the order of detention. Such contention of the petitioner, therefore, merits acceptance.

18. As far as the second contention of the petitioner that there was no imminent possibility of the detenu coming out on bail is concerned, we do not find any good ground to accept the said contention. As rightly pointed out by the learned Additional Public Prosecutor, in the three adverse cases, the detenu was enlarged on bail. Of the first three adverse cases, in the second and third case, the detenu was charged under Sections 302 and 307 IPC, respectively. In fact, in the second adverse case in Crime No. 181 of 2005, tried as S.C. No. 126 of 2007, the detenu was convicted and sentenced to undergo imprisonment for life for offence u/s 302 r/w 34 IPC. Nevertheless, he had the benefit of having been enlarged on bail in both the above two cases, apart from the first as well as the fourth adverse cases. In such circumstance, when the Detaining Authority has mentioned that there was every likelihood of the detenu coming out on bail, even in the present ground case, it cannot be said that the said ground had no basis and under such circumstance, such contention of the petitioner cannot be accepted for interfering with the impugned order of detention. The decisions reported in (2008) 2 MLJ (Crl) 1071 in the case of Senthil Kumar v. District

Magistrate and District Collector, and 1994 SCC (Cri) 354 in the case of Rivadeneyta Ricardo Agustin v. Govt. of Delhi, can have no application to the facts of the present case.

19. As far as the third contention is concerned, on a perusal of the material papers placed before us, we find that in three different places at pages 166, 170 and 196, the Sponsoring Authority, namely, the Inspector of Police, Tallakulam Police Station has mentioned the time of information, the registration of the crime in Crime No. 995 of 2007 and the arrest of the detenu in connection with the said crime alleged to have been committed by him on 23.12.2007, as 20.00 hours, 19.15 hours and 19.15 hours respectively, for which the detenu was arrested at 19.15 hours on 23.12.2007 and the information was received as recorded in Column No. (iii)(b) of the record maintained in the Sponsoring Authority's Station as 20.00 hours. It cannot therefore be held that the same should be ignored as a minor mistake, as such discrepancy in relation to the arrest of the detenu as well as the registration of the crime and the receipt of information, would strike at the very root of the grounds of detention. If the receipt of information was 8.00 p.m., it runs beyond ones comprehension as to how the arrest could have been made at 7.15 p.m. itself, (i.e.) even before the information was received at the Police Station. Such a contradiction or discrepancy found in the records of the Sponsoring Authority's Office would strike at the very root of the case and consequently, we are unable to accept the contention of the learned Additional Public Prosecutor that the same should be discarded as a minor mistake. We therefore hold that it is a very serious discrepancy and such discrepancy makes us to think whether at all the claim of the Sponsoring Authority about the involvement of the detenu in such a crime can be validly accepted and such contention of the petitioner therefore, deserves acceptance.

20. The next contention of the petitioner is about the lack of jurisdiction of the second respondent in passing the order of detention. On this aspect, we find that, in the Detention Order, the Detaining Authority has referred to Section 3(1) of the Tamil Nadu Act 14 of 1982 only in the context of referring to G.O.(D)No.9, Home, Prohibition and Excise (XVI) Department, dated 18.01.2008 by the second respondent herein, namely, the Detaining Authority, who was empowered to invoke Section 3(2) of the Tamil Nadu Act 14 of 1982. In fact the second respondent has passed the impugned order of detention in exercise of such power vested in him u/s 3(2) in pursuance of G.O.(D) No. 9, Home, Prohibition and Excise (XVI) Department, dated 18.01.2008 issued by the first respondent. We, therefore, do not find any merit in the said contention of the petitioner.

21. As far as the last contention of the petitioner, namely that there was undue delay in the disposal of the petitioner's representation, in the proforma placed before us, the following dates have been furnished to us:

1) Date of representation 21.08.2008

- 2) Receipt of representation by the State Government 25.08.2008
- 3) Remarks were called for on 26.08.2008
- 4) The same was received by the Detaining Authority on 28.08.2008
- 5) Detaining Authority called for Parawar Remarks from the Sponsoring Authority on 28.08.2008
- 6) Remarks were received from the Sponsoring Authority by the Detaining Authority on 01.09.2008
- 7) Detaining Authority sent its report to the Government on 01.09.2008
- 8) Such report was received by the Government on 04.09.2008
- 9) Based on the report, the file was submitted on 08.09.2008
- 10) The Under-Secretary dealt with the file on 09.09.2008
- 11) The Deputy Secretary dealt with the file on 09.09.2008
- 12) The Minister for PWD and Law dealt with it on 10.09.2008
- 13) The Rejection Letter was prepared on 16.09.2008
- 14) The Rejection Letter was sent to the detenu on 18.09.2008

22. A perusal of the above dates disclose that there was considerable delay in between 10.09.2008 and 18.09.2008, i.e., after the decision was made by the concerned Minister, the rejection letter was stated to have been prepared only on 16.09.2008 and it took another 2 days time for the first respondent to forward it to the petitioner, i.e., it was sent only on 18.09.2008. The learned Additional Public Prosecutor, though claimed that 12.09.2008, 13.09.2008, 14.09.2008 and 15.09.2008 were public holidays, we find that except 11.09.2008 and 12.09.2008 which are Saturday and Sunday, the other holidays were not shown as holidays in the calendar of the State Government.

23. In the counter affidavit filed on behalf of the second respondent, in Paragraph (viii), there is no specific averment to the effect that those days were public holidays and in such circumstance, excluding 11.09.2008 and 12.09.2008, we find there was a delay of about 6 days in forwarding the rejection letter dated 16.09.2008 to the first respondent. In this context, it would be worthwhile to refer to the decision of the Hon'ble Supreme Court reported in 1999 SCC (Cri) 93, in the case of Rajammal v. State of T.N. and Anr., where the Hon'ble Supreme Court has held that the right and liberty as provided in Article 21, being a fundamental and valuable right, in the absence of proper explanation, delay would vitiate the order of detention.

24. Paragraphs 8 and 9 of the said decision can be usefully referred to, which reads as under:

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

9. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under-Secretary for processing it on the next day. The Under-Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.

25. Applying the above principle to the facts of the present case, we are convinced that the delay in the disposal of the representation of the petitioner should enure to the benefit of the petitioner.

26. One other ground raised by the petitioner about the non-furnishing of the relied upon document, namely, the judgment in S.C. No. 126 of 2007 is concerned, as pointed out by the learned Additional Public Prosecutor himself, in the rejection order dated 16.09.2008 of the State Government, there is no reference to the said issue raised by the petitioner in the representation dated 21.08.2008. On the other hand, curiously, the first respondent has made a categorical statement that the said judgment was very much relied upon by the Detaining Authority in his Detention Order and has stated that furnishing of charge sheet was not necessary. The petitioner never asked for the copy of the charge sheet in the said Sessions Case. The petitioner specifically asked for a copy of the judgment in the Sessions Case in which the detenu was convicted and sentenced to undergo life imprisonment apart from a fine amount of Rs. 1000/-. When such document was a relied upon document, which is not in dispute even according to the first respondent, the non-furnishing of the same would be detrimental to the interest of the detenu and consequently on this ground as well, the petitioner is entitled to succeed.

27. Therefore we allow this Habeas Corpus Petition on the ground that there were discrepancies in the recording of time of registration of the crime in Crime No. 995 of 2007 and the arrest of the detenu, the failure of the State

Government for not having effectively dealt with the representation of the petitioner as well as for the unexplained delay in dealing with the representation of the petitioner.

28. The Habeas Corpus petition is allowed and the order of detention in No.24/BDFGISSV/2008 dated 28.02.2008, 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.