

(2003) 11 MAD CK 0029
In the Madras High Court
Case No : H.C.P. No. 542 of 2003

P. Santhammal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 11 MAD CK 0029

Hon'ble Judges : T.V. Masilamani, J;P.K. Misra, J

Bench : Division Bench

Advocate : S. Swamidoss Manokaran, for the Appellant; M.K. Subramanian, Government Advocate (Criminal Side), for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsels appearing for the parties.

2. The present Habeas Corpus Petition has been filed by the mother of the detenu, who is now in incarceration pursuant to the order of the

detention passed by the second respondent on 9.1.2003 u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug

Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), hereinafter called

as the Act, on the allegation that the detenu is a Goonda

3. In the grounds of detention, reference has been made to several past incidents of alleged involvement of the detenu in commission of several

crimes punishable under Sections 379 and 392 IPC. The allegations indicate that those occurrences had taken place within the jurisdictions of

Gudur police station and Nellore police station, which are within the territorial jurisdiction of Andhra Pradesh and not Tamil Nadu. In the aforesaid

background, the first contention of the learned counsel for the petitioner is to the

effect that since the past occurrences relating to adverse cases had occurred within the jurisdiction of Andhra Pradesh and not within the territorial jurisdiction of Tamil Nadu, the allegations in those cases could not have been considered for the purpose of passing the impugned order of detention. It is the further submission of the learned counsel that if those allegations are ignored, except the ground case, which allegedly occurred within the jurisdiction of Tamil Nadu, there are no other incidents before the detaining authority to come to a conclusion that the detenu was a habitual offender or "Goonda" as defined under the Act.

4. Such a contention raised by the learned counsel for the petitioner is not acceptable. The order of preventive detention is passed on the basis of apprehension in the mind of the detaining authority that a person is likely to commit offences of a particular type in future. For considering such probability, the past records of the person is taken into consideration. Even though it may be assumed for this case that the ground case, on the basis of which the order of preventive detention is passed, should be within the territorial jurisdiction of the detaining authority (even such supposition may not be correct), there is no warrant for the submission that the past history relating to the commission of offences, apart from the ground case, should be in respect of offences within the territorial jurisdiction of the detaining authority. If such a supposition would be accepted, a person having criminal propensity, may go on committing offences successfully within the territorial jurisdiction of different authorities and with a view to commit further offences with impunity, would claim protection on the pretext that the detaining authority has no territorial jurisdiction. The detaining authority takes a decision to pass the order of preventive detention because of the likelihood or the apprehension that such person, if not detained, is likely to commit offences of a particular type in future. There is no requirement in law that the offences allegedly committed in the past by the concerned person should be committed within the territorial jurisdiction of the detaining authority or for that matter within the territorial jurisdiction of the concerned State. The first contention is therefore not acceptable.

5. The second contention is relating to alleged delay in disposal of the representation made on behalf of the detenu. From the materials on record, it

is apparent that the representation of the detenu was received on 14.2.03 and without any further delay, promptly, the remarks were called for on the same day and on the receipt of the remarks within three days, the matter was placed before the appropriate authority, who has disposed of the representation without any further undue delay. Therefore, it cannot be said that there has been any unexplained delay in the disposal of the representation.

6. The third contention of the learned counsel for the petitioner is to the effect that even though an application for bail had been filed on behalf of the detenu and such application was pending, in the order passed by the detaining authority, there is no reference to filing of such application for bail. It has been further submitted that even assuming that non-reference to the bail application by the detaining authority is of no consequence, since such a bail application had been filed, the contents of the said bail application should have been placed before the detaining authority.

Similarly such bail application and the fact that on 10.1.2003, bail order has been passed, should have been brought to the notice of the Advisory Board and the order of preventive detention is vitiated by non-application of mind of all the relevant factors by the detaining authority initially and the Advisory Board subsequently.

7. It is of course true that in the order of detention, it has been recited almost by rote "" I am aware that Thiru Prabhu @ Gunji Prabhu is in remand

and there is imminent possibility that he may come out on bail for the offences under Sections 341, 332, 336, 392, 427 an 506(2) IPC by filing bail

application in the Court"". The fact that by such order of detention dated 9.1.2003, bail application had already been filed and stood adjourned to

10.1.2003, does not appear to have been brought to the notice of the detaining authority. The contents of such bail application would have

obviously some bearing in the matter relating to passing of the order of preventive detention. This would indicate that all the relevant materials,

which were available before the detention order is passed, were not placed before the detaining authority. Even assuming that this would not have

the effect of vitiating the order of detention, the mere fact that the contents of the bail application and the fact that the order granting bail was

passed on 10.1.2003 were not placed before the Advisory Board nor placed

before the State Government for consideration of the representation.

It is of course true that there is no binding proposition which says that contents of the bail application must be accepted to be true by the detaining

authority or the Advisory Board of the State Government while considering the bail application. But there cannot be any dispute regarding the

proposition that the contents of the bail application are of some relevance while considering the question of passing of the order of detention or

confirming the order of detention by the Advisory Board or consideration of the representation by the State Government. Non-placement of the

application for bail and even the result of the bail application before the concerned authorities would tantamount to non-application of mind of the

relevant facts and circumstances, thus, vitiating the order of detention.

8. In the case reported in 1986 SCC (Cri) 535 (ANANT SAKHARAM RAUT v. STATE OF MAHARASHTRA AND ANOTHER), the

Supreme Court observed as follows :-

. . . We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an

undertrial prisoner, that he was arrested in connection with the three cases, that the applications for bail were pending and that he was released on

three successive days in the three cases. This indicates a total absence of application of mind on the part of the detaining authority while passing the

order of detention.

9. Similar view had been expressed by a Division Bench of this Court in the decision reported in 1999 (2) MWN (Cri.)17 (MAHINDER PAL

SINGH SACHDEV, COFEPOSA DETENU, CENTRAL PRISON, CHENNAI v. STATE OF TAMIL NADU, REP. BY SECRETARY TO

GOVT., PUBLIC (SC) DEPT., CHENNAI AND ANOTHER), wherein it was observed that all aspects, even the aspect that would have arisen

after the order of detention, which has got some relevance, should be placed before the Advisory Board.

10. Following the ratio of the aforesaid decision, in our opinion, the order of preventive detention is vitiated on account of the fact that all the

relevant facts were not placed before the detaining authority and subsequently before the Advisory Board.

11. For the aforesaid reasons, the preventive order of detention cannot be

sustained and is hereby quashed. The detenu is directed to be set at liberty forthwith unless he is required in connection with some other case.