

(2007) 06 MAD CK 0008

In the Madras High Court

Case No : Habeas Corpus Petition No. 145 of 2007

Poongodi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 380, 392, 457, 506
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2

Citation : (2007) 06 MAD CK 0008

Hon'ble Judges : R. Banumathi, J;P.K. Misra, J

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiar, for the Appellant; M. Babu Muthu Meeran, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—The wife of the detenu has filed this Habeas Corpus Petition challenging the detention order dated 23.01.2007 passed

against her husband - Udaya Suriyan @ Udaya Kumar, branding him as ""Goonda"" as contemplated u/s 2(f) of Tamilnadu 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. In the Habeas Corpus Petition, though, several grounds have been raised and argued as well, we do not deem it necessary to consider every

one of them, for the Habeas Corpus Petition has to be allowed on the short ground that the subjective satisfaction of the Detaining Authority as to

the imminent possibility of the detenu being released on bail is unsupported by any material.

3. Heard Mr. O.S. Thilak Pasumbadiar, the learned Counsel for the Petitioner and Mr. M. Babu Muthu Meeran, the learned Additional Public

Prosecutor for the Respondents.

4. The learned Counsel for the Petitioner has contended that in the facts and circumstances of the case and as is evident from the record, there was

no imminent possibility of the detenu being released on bail and yet the Detaining Authority, even in the absence of any material to raise an

apprehension that he may be released on bail in the near future passed the detention order.

5. The learned Additional Public Prosecutor for the Respondents has submitted that there was sufficient materials placed before the Detaining

Authority to arrive at the subjective satisfaction that there was a real possibility of the detenu being released on bail.

6. The detenu had earlier come to the adverse notice for allegedly committing theft of gold jewels and vehicles, regarding which, cases were

registered in Cr. No. 33 of 2002 Boiler Plant P.S. for the offence u/s 379 I.P.C.; Cr. No. 347 of 2005 Nagercoil Central Crime P.S. for the

offence u/s 379 I.P.C.; Cr. No. 281 of 2006 Ariyamangalam Police Station for the offences under Sections 457 and 380 I.P.C.; Cr. No. 336 of

2006 K.K. Nagar P.S. for the offences under Sections 457 and 380 I.P.C. and in Cr. No. 441 of 2006 K.K. Nagar P.S. for the offences under

Sections 457 and 380 I.P.C.

7. The ground case relates to an occurrence on 05.12.2006, wherein, the detenu is alleged to have committed robbery of Rs. 2,500/-, regarding

which, a case was registered in Cr. No. 496 of 2006 K.K. Nagar P.S. for the offences under Sections 392 and 506 (ii) I.P.C. The detenu was

arrested and remanded to judicial custody.

8. It may be useful to notice the relevant portion of the detention order, which reads as under:

4. I am aware that Udaya Suriyan is in remand in Ariyamangalam P.S. Cr. Nos. 281/2006 and K.K. Nagar P.S. Cr. Nos. 336, 441 and

496/2006 and has not moved any bail application. I am aware that there is a real possibility of his coming out on bail by filing bail application for

the above cases, since in similar cases, bail are granted by the concerned Court or Higher Courts after lapse of time. If he comes out on bail, he

will indulge in future activities, which will be prejudicial to the maintenance of public order.

9. The principle, whether the order of detention was justified, even though the detenu was in custody on the date of issuance of the order of

detention is well settled in the case reported in Kamarunnissa and Others Vs. Union of India and another, , wherein the Supreme Court has held as

under:

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be

passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable

material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all

probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order

after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to

oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher court.

10. The learned Counsel appearing for the Petitioner has submitted that there was no sufficient material placed before the Detaining Authority to

satisfy as to the imminent possibility of the detenu being released on bail, which vitiates the impugned order of detention.

11. By a perusal of the paper book, it is seen that the accused was remanded in judicial custody in connection with the case registered in Cr. Nos.

336 & 441 of 2006 K.K. Nagar P.S. for the offences under Sections 457 and 380 I.P.C. and in Crime No. 496 of 2006 K.K. Nagar P.S. for

the offences under Sections 392 and 506 (ii) I.P.C. and was remanded till 20.12.2006 and the remand was extended till 24.01.2007. In the

confession statement, the detenu is allegedly involved in various other cases. In the grounds of detention the Detaining Authority has referred only

to some of the Crime Numbers. We feel by filing bail application in few cases, there was no real possibility of the detenu being released on bail.

12. Further, there was no cogent material placed before the Detaining Authority to show that the detenu was on bail in connection with other

cases. It is well settled that the possibility of the detenu being released on bail is not the ipse dixit of the Detaining Authority, but, has to be

supported by cogent materials. In the case reported in 2006 (1) SCC(Cri.) 593 (T.V. Sravanan v. State), the bail applications moved by the

detenu had been rejected by the Courts and there was no material to apprehend that he was likely to move the bail application or that there was

imminent possibility of the prayer for bail being granted. Observing that the imminent possibility of the Appellant coming out on bail was merely the

ipse dixit of the Detaining Authority and not supported by any material whatsoever, the Supreme Court has held as follows:

14. ...The ""imminent possibility"" of the appellant coming out on bail is merely the 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. There was, therefore, no sufficient compliance

with the requirements as laid down by this Court....

13. Referring to the decision reported in (2006) 1 SCC (Cri.) 593 (T.V. Sravanan v. State), in (2006) 9 SCC 711 (A. Shanthi v. Government Of

Tamil Nadu), the Supreme Court has quashed the detention order holding that ""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.

14. In the present case, in our view, there was no cogent material before the Detaining Authority, on the basis of which, the Detaining Authority

could have satisfied as to the imminent possibility of the detenu being released on bail. In the absence of any cogent material the detention order

cannot be sustained and the order of detention is liable to be quashed.

15. For the aforesaid reason, the Habeas Corpus Petition is allowed and the order of detention dated 23.01.2007 is quashed and the detenu is

directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.