
(2006) 01 MAD CK 0175

In the Madras High Court

Case No : Habeas Corpus Petition No. 851 of 2005

R. Kalavathi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2006) 01 MAD CK 0175

Hon'ble Judges : P. Sathasivam, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Ashok Kumar for M. Ravikumar, for the Appellant; Abudukumar Rajarathinam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner by name R. Kalavathi, wife of the detenu Rathina Raj & Rathnavel Pandian, detained as Goonda u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short Tamil Nadu Act 14 of 1982"), challenges the same in this petition.

2. Heard Mr. Ashok Kumar, learned senior counsel for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate for the respondents.

3. After taking us through the grounds of detention and all other materials, learned senior counsel for the petitioner has raised the following contentions.

(a) In view of discrepancy in the Crime Numbers and of the fact that the Detaining Authority was not supplied with relevant material documents, the impugned order of detention is liable to be quashed;

(b) Inasmuch as the translated copy supplied to the detenu contains more

defects, the detenu was not in a position to make effective representation;

(c) Relevant material documents were not only placed before the Detaining Authority, but also not supplied to the detenu, which prevented him from making effective representation;

(d) In the absence of sufficient materials, the Detaining Authority passed the detention order mechanically.

4. The learned Government Advocate appearing for the respondents, by placing reliance on the relevant records and the counter affidavit, met all the contentions. According to him, all the required and relevant materials were placed before the Detaining Authority and only after due consideration, the detention order was passed. He further contended that there is no defect In translated: copy, and even if it is so, it is trivial in nature. He further contended that the detenu was supplied with copies of re-lied on documents and there is no ground for interference.

5. We have perused the grounds of detention, connected materials and also the rival contentions.

6. With regard to the first contention, learned senior counsel for the petitioner submitted that in para 4 of the grounds of detention, the Detaining Authority has not correctly mentioned the Crime Numbers and also not supplied documents relating to the same; hence, the detenu was prevented from making an effective representation. In para 4 of the grounds of detention it is stated that Rathina Raj alias Rathnavel Pandian is in remand in Central Crime Branch "X" Crime No. 508/2005 and 565/2005. We also verified the copy of those documents referred to above, which are available in the paper book supplied to the detenu. By pointing out that in the English version of the order of the Additional Chief Metropolitan Magistrate dated 29-7-2005, there is no reference to the effect that "the case details have been explained to the accused", whereas in the Tamil version of the same document, which finds a place at page 157 of the paper book, there is a specific reference to the effect "(sic)", learned senior counsel submitted that this shows non-application of mind on the part of the detaining authority. On verification of both the documents at page 156 and 157, we are of the view that this omission is trivial in nature and it would not affect the ultimate decision taken by the Detaining Authority. Likewise, we are also satisfied that the crime number mentioned in para 4 of the grounds of detention referred to above, viz., Crime No. 508 of 2005 relates to the adverse case, details of which are available at page 152 of the booklet. The ground case relates to Crime No. 2313 of 2005 on the file of F2 Egmore Police Station. It is further seen that on the recommendation of the Additional Commissioner of Police, Egmore, the case in Crime No. 2313 of 2005 of F2 Egmore Police Station has been transferred to Central Crime Branch in Crime No. 565 of 2005 and on the orders of the Additional Chief Metropolitan Magistrate, Chennai, he was remanded. These details have been sent to wife of the detenu. Apart from that on perusal of the

entire records before passing the order of detention, with reference to the allegations made, the Commissioner of Police, Greater Chennai, Detaining Authority in para 10 of his counter affidavit has specifically stated that,

... I submit, the entire records were placed before me on 1-8-2005 and I went through the records. I submit that after going through the records and after arriving at a subjective satisfaction passed the order of detention on 1-8-2005 and the same was served on to the detenu on 2-8-2005.

In the light of the above explanation and details furnished, we reject the first contention of the learned senior counsel for the petitioner.

7. Coming to defective translation, we verified the documents, wherein, according to the petitioner, certain words/phrases were not correctly translated. We are satisfied that there is no major error in the translation, which would justify the inference of non-application of mind. It is useful to refer that in HCP. No. 2330 of 2002 dated 5-8-2003 (Sudha v. Secretary to Government and another), a Division Bench of this Court considering certain discrepancies in the translation copies supplied to the detenu held that,

5. It is not every minor error in the order that would justify the inference of non application of mind. Venial mistakes and trivial errors, typographical and clerical mistakes which do not impinge on the substance of the matter as also the minor translation errors which do not affect the substance cannot be regarded as constituted sufficient basis to support an inference of non application of mind on the part of the detaining authority to the material which he was required to consider before forming his subjective satisfaction regarding the need for detention.

As said earlier, after verifying the documents referred to and after finding that the defects in translation pointed out by the learned senior counsel are trivial in nature, we are in respectful agreement with the view expressed by the Division Bench and reject the contention raised, by the learned senior counsel for the petitioner.

8. Regarding the other contention, viz., non-supply of material documents and not placing the same before the Detaining Authority, though it is contended that the report of the Sponsoring Authority dated 1-8-2005, which finds place at pages 158 to 163 of the paper book was not supplied to the Detaining Authority and in any event it was impossible for the Detaining Authority to consider those materials and pass an order on the same day. It is seen from the counter affidavit, the Detaining Authority considered and went through entire records placed before him on 1-8-2005 and after subjective satisfaction he passed the order of detention on the same day i.e., on 1-8-2005. The said assertion of the Detaining Authority cannot be doubted. The learned senior counsel for the petitioner, regarding impossibility in placing certain documents before the Detaining Authority on 1-8-2005, very much relied on a Division Bench decision of this Court in the case of Ahmed Ali alias Palanibaba v. The Chief Secretary to

Government of Tamil Nadu and 2 others reported in 1994 (1) MLW (Cri) 171. The Division Bench found that the whole process of placement of papers, perusing of about 77 pages of typed materials, arriving at subjective satisfaction, dictating the preventive order and grounds of detention and getting the order and the grounds ready even by 12.00 noon, after typing, appears to be an impossible feat. The view expressed by the Division Bench is distinguishable on the following reasons. First of all, after the said decision rendered in 1994, vast development had taken place in the field of communication, preparation and taking copies, etc., In other words, by using modern equipments like computers, etc., we are of the view, even after receipt of the report from the Detaining Authority on 1-8-2005, certainly it would be possible for the Detaining Authority to go through the same and take a decision on the same day itself. In this view of the matter, we are unable to accept the view expressed by the Division Bench. For the same reasons, we are of the view that all other decisions relied on by the learned senior counsel for the petitioner on the grounds of "non-application of mind," "mechanical order," "prepared hurriedly," etc., are not applicable to the case on hand.

9. The learned senior counsel for the petitioner has also contended that inasmuch as the bail petition and the order of learned Magistrate were not placed before the detaining authority, the ultimate order of detention is liable to be quashed. It is useful to refer the leading judgment of the Supreme Court in the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, . After discussing various decisions on the point, their Lordships have laid down 6 principles. The principles 2 to 6 which are relevant for deciding the case on hand are as under :

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

10. In view of the decision of the Apex Court, even if the contention of the petitioner is acceptable, the non supply of copy of bail application, and order refusing bail to the detenu will not affect the detenu's right guaranteed under Article 22(5) of the Constitution of India. On the other hand, it is clear from the grounds of detention that the authority has not relied on, but merely referred to them in the narration of events as pointed out by the Supreme Court and hence, the failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. The contrary contention raised is liable to be rejected.

11. Though it is stated that there is no material to pass an order of detention under Act 14 of 1982, on the basis of specific reference made in the First Information Report, viz., running away of the public here and there and closing of shutters by the nearby shop owners and also the public statements, which are available at pages 94, 95, 96, 97, 101 and 103 of the paper book, as rightly pointed out by Mr. Abudukumar Rajarathinam, learned Government Advocate, we hold that the detaining authority had enough materials to arrive at the subjective satisfaction.

12. Though a faint argument is made that the representation sent by way of telegram has not been considered, as observed in the order in HCP No. 2330 of 2002 dated 5-8-2003 (*Sudha v. Secretary to Government and Anr.*), in the absence of written representation followed by the telegram, the authority is not duty bound to consider the same. In other words, it has been held that the telegram sent can be recorded as reliable but the Detaining Authority is not duty bound to consider the telegram unless its contents are reiterated in a subsequent letter. The mere fact that the telegram has been dispatched and the telegram sent, but not followed by a letter, reiterating the contents has not been taken note of by the Detaining Authority does not vitiate the order of detention.

In the light of our discussion, we are satisfied that there is no procedural flaw and the Detaining Authority has considered all the relevant materials before passing the order of detention and the petitioner and the detenu were provided all the required documents, there is no violation of any procedure as claimed. Consequently, this petition fails and the same is dismissed.