
(2009) 06 MAD CK 0194

In the Madras High Court

Case No : Habeas Corpus Petition No. 402 of 2009

Ramya

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0194

Hon'ble Judges : S.J. Mukhopadhaya, J;Raja Elango, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioner challenges the order of detention dated 7.2.2009 made in C.M.P. No. 3/2009 passed by the second respondent in exercise of powers conferred by Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 read with the order issued by the Government in G.O.(D) No. 12, Prohibition and Excise (XVI) Department dated 18.1.2009 u/s 3(2), detaining her husband Ayyasamy in Central Prison, Madurai.

2. The learned Counsel appearing on behalf of the petitioner, while challenging the detention order, submitted that there is an unexplained delay in deciding the petitioner's representation dated 17.2.2009 preferred before the second respondent. In reply, the learned Additional Public Prosecutor referred to the counter affidavit and submitted that the representation dated 17.2.2009 was sent to the Government along with the remarks on 28.2.2009 and the decision was intimated to the petitioner on 2.3.2009. Thus, we find there is no delay in deciding the representation of the detenu.

3. The second ground taken by the learned Counsel for the petitioner is that the

authorities suppressed the relevant fact that the detenu had filed a petition for bail, which was pending on the day when the order of detention was passed. Non furnishing of such material to the detaining authority would amount to suppressing or withholding materials from consideration of the same by the sponsoring authority and therefore, the order of detention has to be held as illegal. In this regard, reliance is placed on the decision of a Division Bench in *P. Chellaiah v. Secretary to Government of Tamil Nadu* (2007) 2 MLJ (Crl.) 608.

4. So far as the second ground is concerned, we find no case is made out by the petitioner. In the case of *P. Chellaiah* (supra), the Court was of the opinion that the detaining authority is bound to consider all the relevant materials placed before him, before arriving satisfaction to pass an order of detention. There may be materials which may be merely referred to by the detaining authority and there may be some materials which may be actually relied upon by the detaining authority to pass the detention order. In that case, it was submitted on behalf of the petitioner that pendency of bail application had relevance in the wake of the allegations made in the petition. That was a case falling under the provisions of Special Act, viz. Mines and Minerals (Development and Regulation) Act, 1957 and State Regulations. The Court, having noticed that when the sponsoring authority had the knowledge of bail application, non furnishing of the said material to the detaining authority would certainly amount to either suppressing or withholding materials from the consideration of the same by the detaining authority, held that such ground was enough to grant the relief in the said petition. In that case, non supply of the material to the detaining authority assumes importance, particularly when the offences alleged are to be taken cognizance by the authorities empowered under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed therein. Had the materials been placed before the detaining authority, the ground taken could have weighed in the mind of the detaining authority, either way, before passing the order of detention.

5. When similar matter fell for consideration before a Full Bench of this Court in *K. Thirupathi v. District Magistrate and District Collector* 2005 2 LW (Crl.) 946, the Court observed as under:

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; 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) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its 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.

6. The imminent possibility or likelihood of the detenu being released on bail also fell for consideration before the Supreme Court in *A. Geetha v. State of T.N.* (2006) 3 SCC (Cri.) 324. In the said case, while the Supreme Court noted that prayer for bail could be accepted depending on circumstances of each case and no hard and fast rule can be applied, observed that "only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is a likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with."

7. In *Anuradha v. Joint Secretary* (2006) 2 SCC (Cri) 432, evaluation of grounds of detention and non placement of some materials before the detaining authority fell for consideration of the Supreme Court. The Supreme Court held that when the detention order is passed on various grounds and if some materials are not placed before the detaining authority, it would only affect one of the grounds stated in the detention order. The detention order by itself is sufficient to stand on its own on the basis of other grounds. As a whole, the detention order cannot be said to be illegal, though one of the ground may be wrong.

8. In *Ahamed Nassar Vs. The State of Tamil Nadu and Others*, , the Supreme Court observed as follows:

A man is to be detained in the prison based on the subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have a bearing on the issue should be placed before the detaining authority. The sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenu. The decision is not to be made by the sponsoring authority. The law on this subject is well settled; a detention order vitiates if any relevant document is not placed before the detaining authority which reasonably could affect his decision.

9. From the aforesaid finding, it is clear that mere non furnishing of one or other material before the detaining authority would not automatically make the order illegal. If it is only found that non furnishing of certain materials to the detaining authority would amount to suppressing or withholding materials from consideration of the same by the detaining authority, which otherwise have a chance of change of mind by the detaining authority, then only, an inference can be drawn whether the detention order is vitiated for non consideration of such material facts.

10. In the present case of the petitioner, the detaining authority has noticed that the detenu had been remanded to judicial custody by Judicial Magistrate, Vellore in connection with number of criminal cases and he was in remand in Central

Prison, Madurai up to 13.2.2009. He also came to know that the detenu had filed a bail petition in CrI.M.P. No. 119 of 2009 before the Judicial Magistrate, Vellore and the same was dismissed by the Court. Therefore, he came to a conclusion that there is a real possibility of his coming out on bail by filing another bail application for the above case before the same Court or High Court, since, in similar cases, bails are granted by the concerned Court or High Court after some time. Even if it is presumed that as on the date of such consideration, the sponsoring authority had the knowledge of another bail petition filed by the detenu and has not brought the aforesaid fact to the notice of the detaining authority, the question that arises for consideration is that whether, in such circumstances, the detaining authority could have taken a different conclusion than the conclusion arrived at that there is a real possibility of his coming out on bail. Obviously, the answer will be "no". Even on furnishing such information, the detaining authority would have come to a definite conclusion that there is a possibility of coming out on bail because of the second application filed by the detenu and in similar cases, bails are granted by concerned Court or High Court after lapse of time. As non furnishing of such information would, in no manner, change the mind of the detaining authority, we are of the view that non furnishing of such opinion cannot be alleged to be a suppression of the material facts affecting the rights of the detenu.

We, thus, find no merit in the present case and accordingly, it is dismissed.