

(2002) 06 MAD CK 0103

In the Madras High Court

Case No : Habeas Corpus Petition No. 1881 of 2002

Rani

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)

Citation : (2002) 06 MAD CK 0103

Hon'ble Judges : R. Jayasimha Babu, J;A. Packiaraj, J

Bench : Division Bench

Advocate : P. Venkatasubramanian, for the Appellant; I. Subramaniam, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—One Ramu was detained under the Tamil Nadu Act 14 of 1982, under a detention order dated 27.11.2001,

passed by the District Collector and District Magistrate, Thiruvallore District after the detaining authority had reached satisfaction on the basis of

the materials placed before him by the Sponsoring Authority, who had placed such materials before him, on the 23rd November, 2001 that the

said Ramu was a bootlegger selling I.D. arrack mixed with intoxicating poisonous substances in contravention of the Tamil Nadu Prohibition Act.

The detention was ordered with a view to prevent him from indulging in such prejudicial activities in future. The detenu, as set out in the detention

order, had been involved in seven cases, in three of which he had already been convicted and in one of which he was fined and three other cases

were pending before the Courts. The detenu was in custody at the time the detention order was passed.

2. Learned counsel for the petitioner, who is the wife of the detenu, questioned the legality and validity of the detention on two grounds, first, that

there is an error of fact in paragraph 2 of the order of detention, in so far as it contains a statement ""he has not filed any bail petition so far"". It was

pointed out by the counsel that the detenu had infact filed a bail application on the 21st of November 2001, copy of which had also been served

on the concerned Public Prosecutor and that that bail application came to be rejected on the 27th, the very day on which the order of detention

was passed. Learned counsel submitted that failure on the part of the Sponsoring Authority to place the bail application before the Detaining

Authority vitiated the order of detention as it amounted to suppression of relevant material and also rendered the detention order illegal, inasmuch

as it resulted in non-application of mind to facts which should have been but had not been considered by the Detaining Authority.

3. The second ground on which the order of detention was sought to be quashed was that even after the passing of the detention order, the

rejection of the bail application on the 27th as also the subsequent event of grant of bail by the High Court on the 28th, a day after the detention

order was passed, had not been placed before the Government before it approved the detention order and also that that material was not placed

before the Advisory Board when it considered the representation of the detenu.

4. Yet another point which was canvassed by the counsel at the fag end of the argument was that the representation which the wife had sent

allegedly on the 22nd of December, 2001 was rejected only on the 11th of January 2002 and, therefore, there was delay in considering the

representation which vitiated the detention.

5. Paragraphs 5 (i) and (ii) of the order of detention read thus:-

5 (i) I am aware that Thiru Ramu is in remand and there is imminent possibility that he may come out on bail for the offences u/s 4 (1) (i), 4 (1)

(aa) and 4 (1-A) of Tamil Nadu Prohibition Act 1937 by filing bail application in the Court. I am also aware that in similar cases accused were

enlarged on bail by this Court or by the Superior Court after lapse of some time and if he comes out on bail, he will indulge in such further activities

in future as well which will be prejudicial to the maintenance of public health and public order and further the recourse to normal criminal law would

not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public health

and public order. On the materials placed before me, I am satisfied that the said Thiru.Ramu is a ""Boot-legger"" and that there is a compelling

necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public

health and public order under the provisions of the Tamil Nadu Act 14 of 1982.

(ii) I am aware that Thiru.Ramu has been remanded to judicial custody by the Judicial Magistrate-Tiruttani (Incharge) on 16.11.2001. I am also

aware that he is a remand prisoner, lodged in the Sub-Jail, Tiruttani. He has not filed any bail petition so far. There is a possibility of his filing of bail

application and being enlarged on bail by the Criminal Court. I am also aware that in such cases, bail is granted after lapse of some time and if

Thiru.Ramu is then let to remain at large, he is likely to indulge in such further prejudicial activities in future as well and therefore there is compelling

necessity to pass this order of detention with a view to prevent him from indulging in such prejudicial activities in future.

6. The Supreme Court in the case of Abdul Sathar Ibrahim Manik -vs- Union of India and Others 1992 SCC (Cri.) 1 reviewed the law

concerning the law providing for preventive detention of persons who are already in custody. After an exhaustive review of the decisions on that

point, the Apex Court has formulated it's conclusions in paragraph 12 of the judgment. After holding that a detention order can validly be passed

even in case of a person who is already in custody, provided the authority was aware that the detenu was already in custody and there exists

sufficient material necessitating the detention of the person in custody, the Apex Court has, in it's Conclusion No.(3) at paragraph 12 has stated

the effect of non-consideration of a bail application in the following words:-

(3) If the detenu has moved for bail then the application and 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"".

7. Conclusion Nos.(4) and (5) set out in paragraph 12 are as under:

(4) Accordingly the non-supply of the 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.

8. The legal position, therefore, is that non-placement of a bail application moved by a person in custody in respect of whom a detention order is

made by the detaining authority, when the result of that bail application is one of refusal to grant bail does not amount to suppression of relevant

material. It is admitted here that the bail application as also the order thereon had not been placed before the Detaining Authority. The Detaining

Authority, however, as is clear from the other parts of his order, was well aware of the fact that the detenu was in custody and that he was a

remand prisoner. The Detaining Authority also, on the basis of the material before him, had formed a opinion that there was imminent possibility of

the detenu coming out of bail by filing bail application and securing bail, the possibility of the bail being granted being real, having regard to the

nature of the offence and the nature of the orders passed by the Courts in relation to such bail applications by persons accused of committing such

offences.

9. The non-consideration of the bail application, which is merely the consequence of the failure on the part of the Sponsoring Authority to place the

materials before the Detaining Authority, did not also result in the non-application of mind to relevant material by the Detaining Authority, the

material itself not being before him and as held by the Apex Court, that material

also not being such as to be regarded as relevant material. As

expressly stated by the Apex Court, the question of non-application of mind and satisfaction being impaired would not arise at all in such cases as

long as the Detaining Authority was aware of the fact that the detenu was in actual custody.

10. Learned counsel for the petitioner, however, contended that the detaining authority in this case had stated as a fact that no bail application had

been filed and that would indicate that he had relied upon that statement when he formed the opinion that there was a need to detain the detenu,

despite his being in custody and that there was imminent possibility of the detenu coming out on bail if and when a bail application was moved. This

argument, however, is not one which can be accepted. The statement in the order of detention that no bail application had been filed was based

upon the fact that the Sponsoring Authority had not placed any bail application before the Detaining Authority. The failure on the part of the

Sponsoring Authority to place that material before the Detaining Authority, as held by the Apex Court, would not amount to suppression of

relevant material. So far as the Detaining Authority was concerned, there was no failure on his part to apply his mind to material placed before him.

That statement in the detention order, so far as the Detaining Authority was concerned, was one which cannot be characterised as being incorrect

to the knowledge of the Detaining Authority. That statement merely was an observation as to the state of the record which was before him. The

formation of his opinion that there was imminent possibility of the detenu coming out on bail was not based upon the fact that no bail application

had been filed, but was based upon the fact that the offences with which the accused had been charged were such that it was the practice of the

Courts to grant bail to the accused in such cases and there was a possibility of the accused seeking bail in future and also securing bail from the

Courts. It cannot, therefore, be said that the statement that the detenu had not filed a bail application was a fact which had been relied upon for the

purpose of arriving at the necessary satisfaction, which is the pre-requisite for directing preventive detention.

11. Learned counsel for the petitioner invited our attention to certain decisions of the Apex Court as also of this Court in support of his submission

that the non-placement of the bail application vitiates the order of detention. Counsel, however, has not placed before us any decision of the Apex

Court, which has overruled the law laid down in Abdul Sathar's case, referred to above. The decision rendered in the case of Abdul Sathar is still

good law and is a decision which is directly relevant to the question required to be considered in this case and the proposition laid down therein

which we have already extracted squarely applies to the facts of this case.

12. Learned counsel referred us to the decision of the Apex Court in the case of V.C. Mohan Vs. Union of India and Others, : wherein the Apex

Court held that the non-placement of relevant documents before the detaining authority had a serious effect and had resulted in definite inroad to

detenu's liberty without application of mind. That proposition is not attracted here as in the case of Abdul Sathar it has been clearly held that non-

placement of the bail application and the order rejecting the bail application does not vitiate the order of detention. The only inference possible

from that dictum is that those documents cannot be strictly regarded as relevant documents or material documents which ought to have been

placed before the detaining authority and the failure to place such document would not vitiate the order of detention.

13. Counsel also referred us to the case of Amritlal and other -vs- Union Government through Secretary, Ministry of Finance and others [2000

AIR SCW 4203]. The question considered therein was with regard to the need for the Detaining Authority to reach satisfaction on the basis of

cogent material. At paragraph 7 of the judgment the Court stated what cogent material is, in these words:-

Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

The Detaining Authority here has clearly stated that there was a likelihood of the bail application being moved as also the imminent possibility of

bail being granted.

14. Learned counsel also referred to us the case of Rivadeneyta Ricardo Agustin - vs- Government of the National Capital Territory of Delhi and

Others 1994 SCC (Cri.) 354 wherein it was held that in the absence of material to show that the release of a person who was already in custody

and against whom a detention order was made was imminent the detention

order was liable to be quashed. The Apex Court therein referred to its earlier decision in the case of Kamarunnissa and Others Vs. Union of India and another, wherein it had been observed that the inference regarding imminent possibility must be drawn from the material on record and must not be the ipsi dixit of the officer passing the detention order.

15. Reference was also made by counsel to the case of Noor Salman Makani -vs- Union of India and others 1992 SCC (crl) 521 wherein it was observed that the statement made in the detention order that there was possibility of the detenu being released on bail in a case where the detenu was already in custody would not show non-application of mind by Detaining Authority with regard to circumstance that the detenu was in jail.

16. The cogent material in this case before the authority was the fact that the detenu was in custody; that he was charged with offences for which bail could be granted by the Court; that the Courts had been granting bail in such matters to persons accused of offences under the provisions of law for breach of which the detenu had been charged and that the detaining authority was aware of that practice of the Courts. It must be mentioned here that the detention of bootleggers is not an uncommon event in this State where over a thousand detention orders are made annually under the special State enactment Act 11/1982 and it is not a stray detention order that is made by the detaining authority. The Detaining Authority was, therefore, conversant with the practice of the Courts in relation to the offences under the Prohibition Act and the fact that Courts had been granting bail to persons accused of offences under that enactment.

17. We were also referred by the counsel to a judgment of a Full Bench of this Court, in the case of Hidaya Banu and another -vs-State of Tamil Nadu (H.C.P.Nos.1633 and 1152 of 2001, dated 11.4.2002). The question there was as to whether the reference to the detenu as a remand prisoner when infact he was not on remand vitiated the detention order. The Court held that such description of the detenu in the detention order was indicative of non-application of mind to the facts which were relevant for the purpose of deciding on the question of preventive detention. The Court therein observed that ""it is by now settled law that a factually incorrect statement in respect of the extension of remand vitally and fatally affects the detention order"". In the case before us, the order is not one which

concerns a prisoner who was not on remand. Admittedly, the detenu was on remand and that fact has been properly noted by the Detaining Authority.

18. We were also referred to a judgment of another Full Bench of this Court in H.C.P.Nos.11 of 2000 etc., decided on 13.2.2001. The question involved in that case was as to the correctness of the meaning of English version of the grounds of detention in its translated version, furnished to the detenu. That case has no application to the case on hand.

18-A. We do not, therefore, find any merit in the first submission of the petitioner.

19. The point urged by counsel that the bail application and the order declining bail should have been placed before the Government before it confirmed the detention order and that it should have also been placed before the Advisory Board does not require much consideration as the principle laid down in the case of Abdul Sathar Ibrahim Manik -vs- Union of India and Others [1992 SCC (Cr.) 1] that the non-placement of the bail application and the order declining bail does not amount to suppression of relevant material, applies with equal force to the Government and the Advisory Board as well.

20. The last ground urged was that there was delay in consideration of the representation. The representation, though dated 22.12.2001 was in fact sent by post only on the 28th. The petitioner ought to have stated the date of posting instead of misleading the Court by merely referring to the date of the representation. The learned Public Prosecutor produced the postal cover which bears the seal of 28.12.2001 as the date of despatch. The learned Public Prosecutor submits that immediately after the representation was received the same was put up before the concerned authorities, processed at the appropriate levels and was immediately thereafter rejected on the 9th January 2002. The intimation of rejection was also sent to the petitioner and it reached the petitioner on 11.1.2002. We do not see any delay in this process which would fall foul of the standard set in Article 22(5) of the Constitution, which requires that the representation be considered as expeditiously as possible.

21. In the result, none of the grounds urged to quash the order of detention is sustainable. The petition is accordingly dismissed.