

(2011) 11 MAD CK 0295

In the Madras High Court

Case No : Habeas Corpus Petition No. 955 of 2011

R.L. Ashokan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Penal Code, 1860 (IPC) — Section 109, 120(B), 143, 188, 294

Citation : (2011) 11 MAD CK 0295

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : R. Shanmugasundaram and Mr. N.R. Elango, for Mr. R. Vivekananthan, for the Appellant; I. Subramanian Senior Counsel, Public Prosecutor Assisted by Mr. M. Maharaja Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—The maternal uncle of the detenu Suresh Babu @ Pottu Suresh is the petitioner in this habeas corpus petition, and he has challenged the order of detention passed by the second respondent in C.M.P.No. 03/2011 dated 25.7.2011.

2. As per the grounds of detention dated 25.7.2011, the detenu came to the adverse notice in the following cases:

1.Madurai District, Thirunagar Police Station Cr.No. 143/2011 for the alleged commission of offences under Sections 143, 188, 294(b), 341 and 353 IPC. The case is pending trial in Court in C.C.No. 197/11.

2.Madurai District Crime Branch Cr.No. 44/2011 for the alleged commission of offences under Sections 120(B), 109, 406, 420, 323, 294(b), 506(i) IPC r/w 3(1) TNPPDL Act. Investigation is in progress.

3. The detaining authority has relied on the above adverse cases and also the

ground case in Crime No. 42/2011, on the file of Madurai District Crime Branch, for the alleged offences under Sections 143, 120(b), 109, 406, 420, 387 and 506(ii) IPC, to arrive at a conclusion that the detenu was a Goonda as defined u/s 2(f) of Tamil Nadu Act 14/1982.

4. Heard both sides.

5. The first submission of Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the petitioner, is that the detaining authority in paragraph No. 5 of the grounds of detention, has expressed awareness about the judicial custody of the detenu in the ground case, in Palayamkottai Central Prison and the only material found in the booklet showing the judicial remand, is the report of the Jailor, Central Prison, Palayamkottai prepared on 25.7.2011, and the detention order and the grounds of detention have been served on the detenu at Central Prison, Palayamkottai at 8.00 A.M. on 25.7.2011 itself, and hence the said report of the Jailor could not have been placed before the detaining authority while clamping the order of detention and only later, the said document has come into existence and hence the awareness about the judicial custody expressed by the detaining authority, is not based on any material and it is vitiated. Per contra, Mr.I.Subramanian, learned Public Prosecutor, submits that the Jailor's report is dated 25.7.2011, and there is always the possibility of placing the said report before the detaining authority on the said date and it cannot be said definitely, that the said material was not available before the detaining authority at the time of clamping the order of detention.

6. The only material showing the judicial remand of the detenu in the ground case in Crime No. 42/2011, is the Jailor's report dated 25.7.2011, which is found in page No. 59 of the booklet. It is, no doubt, true that the detaining authority is stationed at Madurai and the Jailor's report from Palayamkottai Central Prison has to be placed before the detaining authority while passing the order of detention; but, the possibility of the said Jailor's report having been placed before the detaining authority on 25.7.2011, while clamping the order of detention, cannot be ruled out, in the absence of any mention about the time at which the report of the Jailor came to be prepared. Hence we are unable to accept the contention of the learned Senior Counsel appearing for the petitioner, in this regard.

7. The second submission of the learned Senior Counsel appearing for the petitioner, is that the subjective satisfaction expressed by the detaining authority, with regard to the real possibility of the detenu coming out on bail in the ground case, in which he was in remand, is not based on cogent material and the said satisfaction was expressed on the basis of bail orders passed in similar cases by the concerned Court or High Court, and the particulars of the bail orders passed in similar cases, are not mentioned anywhere in the grounds of detention and the copies of those orders were also not furnished to the detenu and the subjective satisfaction expressed, can only be termed as ipse dixit of the detaining authority and it is vitiated. Reliance was placed by the learned Senior Counsel on the latest

decision of the Supreme Court in *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, in this regard. Learned Public Prosecutor submits that the subjective satisfaction of the detaining authority with regard to the real possibility of the detenu coming out on bail, is expressed on the basis of bail orders granted in similar cases and the fact being that the bail petition filed by the detenu, was pending disposal, the detaining authority has expressed satisfaction about the possibility of his coming out on bail in the ground case.

8. The detaining authority in paragraph No. 5 of the grounds of detention, has referred to the judicial remand of the detenu in the ground case in Crime No. 42/2011 and proceeded to observe that the bail petition filed by him before the Judicial Magistrate Court No. I, Madurai, is pending disposal and 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 lapse of remand period. It is averred that the bail petition filed by the detenu in the ground case, in which he was in remand, was pending disposal before the Judicial Magistrate Court No. I, Madurai; but, the detaining authority has further observed that there is a real possibility of the detenu coming out on bail by filing another bail application for the very same case. When a bail petition is pending disposal, there is no need to file another bail application and this observation made by the detaining authority exhibits non-application of mind. Further, the subjective satisfaction expressed on the real possibility of the detenu coming out on bail, was based on bail granted in similar cases by the concerned Court or High Court. The particulars of the bail orders passed in similar cases, are not mentioned either in paragraph No. 5, or anywhere in the grounds of detention. The copies of the bail orders in such similar cases, were not furnished to the detenu in the booklet. There is no material to show that they were placed before the detaining authority at the time of clamping the order of detention. In this context, the decision in *Rekha's* case, referred above, is relevant and in the said case, the Supreme Court was considering a detention order wherein the subjective satisfaction came to be expressed based on bail granted in similar cases; however, the details of the same had not been given and in such circumstances, it is laid down as follows:

20. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a Bail Application which is pending. It follows logically that if no Bail Application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the Detaining Authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no Bail Application of his is pending, since most Courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

9. In the present case, the details of bail orders in similar cases, have not been given and hence the subjective satisfaction expressed by the detaining authority, can only be termed as ipse dixit, not based on cogent material. On that ground, the detention order is vitiated.

10. The last submission of the learned Senior Counsel appearing for the petitioner, is that there is no nexus between unlawful activities attributed to the detenu, and the order of detention, since the ground case is stale and it has no potentiality to disturb peace and tranquility of the locality and the offences alleged to have been committed by the detenu, cannot be called prejudicial to the maintenance of public order and hence the detention order is illegal and unsustainable. In support of his submission, learned Senior Counsel relied on the decision of the Supreme Court in K.K. Saravana Babu Vs. State of Tamil Nadu and Another, . Per contra, learned Public Prosecutor submits that nexus should be seen widely and not by counting dates and months and the nature of activity indulged by the detenu, has to be taken into account and the money power and muscle power have been used by the detenu to extract documents from the innocent seller and the totality of the activities of the detenu has caused insecurity in the mind of general public and the order of detention is sustainable.

11. The detaining authority in order to clamp the order of detention, has relied on the facts of the case in Crime No. 42/2011 registered for the alleged offences under Sections 143, 120(b), 109, 406, 420, 387 and 506(ii) IPC, on the file of District Crime Branch, Madurai and the facts of the case are narrated in paragraph No. 3 of the grounds of detention, and they are extracted below for better appreciation:

3. The grounds on which the said detention has been made against the above individual are as follows:

On 14.07.2011 at 09.00 hrs Tmt.S. Pappa, aged 60/2011, W/o. S. Sivanandi, Venkatasamuthiram, Thirumangalam, appeared before the Superintendent of Police Madurai District and gave a petition stating that herself and her husband have resigned the government job and jointly started a mill titled "Narmadha processing" in 1989. Quitting from that place later, they have started another mill titled "E.S.P. Textiles processing" getting loan from TIIC. For the purpose of getting loan she has produced the patta(349) for the land in S.No. 106/3 measuring 5.1/4 acres in Sengulam Village of Thirumangalam Taluk. But due to loss incurred in the business and non repayment of loan, the land was brought to sale by TIIC. When she revealed this hardship to his relative one Mohan of Neyveli, he has told that he will arrange for the sale of land at Rs.70,000/-per cent. Later she was brought to Sub Registrar Office Santhome Road Chennai on 30-06-2007 and given Rupees 1,40,00,000 (One Crore forty lakhs) duly getting her signature and promised to give the remain amount later. Having settled the loan due to TIIC and received the original documents, I demanded for the balance due from Mohan but he was delaying. Hence she cancelled the power deed and returned to village where she has narrated the things to one

Manickam, Tahsildar of Usilampatti. On hearing this he consoled us and assured to arrange for the sale of land at a competitive price. He brought them to Moogambigai Sethuraman, Thiru Dalapaty D.M.K. Secretary Kodi. Chandrasekaran Tirumangalam Chairman through Murali of T.Kallupatti and they demanded their land for a very low price for which they refused. Later Thiru Manickam Tahsildar contacted us over phone and warned to sell the land for the price of their choice, failing which the issue will go big. Later one Naresh Kumar of Chennai lodged a complaint with the DSP Thirumangalam and on the strength of which the DSP. summoned them for enquiry. When they informed this to Tahsildar Manickam he advised to appear for enquiry stating that he will take care of the issue. When her husband turned up for enquiry, an advocate has approached him promising to settle the issue connected with Naresh Kumar's complaint through negotiations by Dhalapathy and brought her husband. Later Tahsildar Manickam brought her husband in a car to the office of Pottu Suresh at Madurai. There, in front of Pottu Suresh, S.R. Gobi, DMK Secretary Dalapathy, Moogambigai Sethuraman, Thirumangalam Chairman Kodi Chandrasekar, T.Kallupatti Murali have threatened to accept their offer of Rs.50,00,000/- (Rupees Fifty Lakhs) for their land and promising to take care of the issue of complaint by Naresh Kumar, failing which they will be killed through S.R.Gobi. Out of fear her husband accepted to register the land in their favour. Later due to persistent threat to herself and her husband executed a power deed in favour of Krishnasamy husband of Chairman of Thirunagar Township in Sub Registrar's office Thirumangalam. The DMK functionary Krishnapandian also signed as a witness in the documents. Later getting our signature in the blank stamp paper of the value Rs.1,000/-they informed to receive the sale amount in the residence of Dhalapaty. When we reached his home, all those mentioned above were present and threatened to leave giving Rs.40,00,000/-(Rupees Forty Lakhs). Thus all the accused have conspired to cheat and grab her land and a case was registered in Cr.No. 42/11 u/s 143, 120(b), 109, 406, 420, 387, 506(ii) of I.P.C. On receipt of complaint in District Crime Branch on 19-07-2011 at 09.00 hours from the complainant Case was registered against oneDhalapaty, Kodi Chandrasekan, Suresh Babu @ Pottu Suresh and Krishpandy and others.

12. The above averments reveal that steps for the sale of the land commenced on 30.6.2007; but, the occurrence relating to threatening the complainant by the detenu and others, was subsequent and no date is mentioned. A copy of the FIR in Crime No. 42/2011, is found in page No. 25 of the booklet and from the averments therein, it is seen that the above occurrence took place two years after 30.6.2007, and no exact date is mentioned therein. A copy of the statement of the complainant recorded by the Investigation Officer u/s 161 Cr.P.C. in the said case, is available at page No. 33 of the booklet and at page No. 35, the complainant has stated the date of the said occurrence as "one day in the month of March in the year 2010". Though the complaint was given on 14.7.2011, and the detention order having been passed on 25.7.2011, there is a gap of more than one year from the date of the alleged unlawful activities of the

detenu. In such circumstances, the submission of the learned Senior Counsel appearing for the petitioner, that there is no nexus between the alleged unlawful activities of the detenu and his detention and the ground instance is stale in relation to the detention, cannot be discarded.

13. It is also to be seen whether the detenu's activity had any impact on the local community or in other words, whether the act of the detenu has caused harm, danger, or alarm, or a feeling of insecurity among the general public, or any section thereof. The unlawful activities alleged on the part of the detenu, is against an individual, namely the complainant in the case, and the alleged occurrence took place inside the Office of the detenu. As per the averred facts, the unlawful activity on the part of the detenu, has no potentiality to disturb peace and tranquility and it cannot be termed as causing any harm, danger, or alarm, or a feeling of insecurity among the general public.

14. The Supreme Court in the decision in K.K. Saravana Babu's case, cited supra, has considered the distinction between the law and order and public order and has laid down as follows:

23. This Court in another important case Ashok Kumar Vs. Delhi Administration and Others, clearly spelled out a distinction between "law and order" and "public order". In this case, the Court observed as under:

13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.

....

31. We have tried to deal with the important cases dealing with the question of "law and order" and "public order" right from Romesh Thappar Vs. The State of Madras, to the latest case of R. Kalavathi Vs. The State of Tamil Nadu and Others, . This Court has been consistent in its approach while deciding the distinction between "law and order" and "public order". According to the crystallised legal position, cases affecting the public order are those which have great potentiality to disturb peace and tranquillity of a particular locality or in the words of Hidayatullah, J. disturb the even tempo of the life of the community of that specified locality.

15. In the present case, the alleged act attributed to the detenu affects a specific

individual namely the complainant, and it is only a problem of law and order and it cannot be termed as one affecting public order. In such circumstances, the observation of the detaining authority in paragraph No. 4 of the grounds of detention, that the detenu caused disruption to public peace and public order and was acting in a manner detrimental to its maintenance, is not based on any material and it vitiates the order of detention. For the above said reasons, the order of detention is liable to be set aside.

16. In the result, this habeas corpus petition is allowed, and the impugned order of detention in C.M.P.No. 03/2011 dated 25.7.2011, passed by the second respondent, is set aside. The detenu Suresh Babu @ Pottu Suresh, S/o. Natarajan, is ordered to be set at liberty forthwith unless his custody is required in connection with any other case.