
(2003) 11 MAD CK 0116
In the Madras High Court
Case No : H.C.P. No. 582 of 2003

S. Mohammed Meeran

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 11 MAD CK 0116

Hon'ble Judges : T.V. Masilamani, J;P.K. Misra, J

Bench : Division Bench

Advocate : S. Swamidoss Manokaran, for the Appellant; M.K. Subramanian, Government Advocate (Criminal Side), for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsels appearing for the parties.

2. The present Habeas Corpus Petition has been filed by the father of the detenu, who has been detained u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), hereinafter called as the Act, on the allegation that the detenu is a habitual offender "Goonda".

3. Learned counsel for the petitioner has contended that the ground case, on the basis of which the order of preventive detention is passed, had occurred on East Coast Road, which is not frequently used by the members of public, and therefore, even assuming that some incident had occurred on the said road, such occurrence may not have the tendency of disturbing the public order and as such it is a mere case of law and order in a particular secluded area and not a case of disturbance of public order.

4. Such a contention is to be merely stated to be rejected. There is no dispute that East Coast Road is a public road meant to be used by the members of the public. The very fact that only few persons use the road is not a consideration for

coming to the question as to whether any criminal occurrence occurring on such road would not have the tendency of disturbing the public order. Such a contention is not acceptable and is accordingly rejected.

5. The second contention raised by the learned counsel for the petitioner, however, appears to be more formidable. Learned counsel for the petitioner has pointed out that in the order of preventive detention it has been indicated that almost by rote that the detenu is likely to be released on bail. However, the very fact that an application for bail filed by the detenu had been rejected by the Magistrate and subsequently such application had been rejected by the High Court had not been brought to the notice of the detaining authority.

6. A perusal of the relevant orders indicates that due to involvement of the accused in several cases, bail was not granted. The contents of such order rejecting the bail application and the fact that bail application had been rejected by the High Court are the relevant facts to be considered by the detaining authority to come to a question as to whether there is possibility of the detenu being enlarged on bail. It is true that even if a person is in custody, an order of preventive detention can be passed and there is possibility of such person being released on bail in near future. However, the question as to whether there is such possibility or not is to be considered by the detaining authority by taking into account all the relevant facts and circumstances. The mere magic incantation of the expression "Hence there is possibility of him being enlarged on bail by the Appellant Court" without keeping in view the reasons for refusal of bail by the Magistrate or the higher court would not be sufficient.

7. In the decision reported in 1994 SCC 354 (RIVADENEYTA RICARDO AGUSTIN v. GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY OF DELHI AND OTHERS) it was observed as follows :-

" 4. Though several grounds are urged in support of the writ petition by Shri Ram Jethmalani, learned counsel for the petitioner, it is not necessary to refer to all of them except one which, in our opinion, merits acceptance. It is submitted that on the date the order of detention was made the petitioner was in judicial custody. The bail petitions filed by him were dismissed finally on June 9, 1992. He did not move any bail application thereafter. No bail application was pending on August 18, 1992. There was no other circumstance indicating that the petitioner would be released from custody. In these circumstances, there was no material before the authority to believe that there was a real possibility of petitioner being enlarged on bail or being released and that it is necessary to detain him to prevent him from engaging in prejudicial activity. It is pointed out that according to the counter, proposal for the detention of petitioner was sent to the Administrator on May 22, 1992 but the authority passed the order only on August 18, 1992 without apprising himself of the fact-situation prevailing in the middle of August 1992. Reliance is placed upon two decisions of this Court in Kamarunnissa v. Union of India and Hawabi Sayed Arif Sayed Hanif v. L. Hmingliana. In the first case the principle relied upon by the learned counsel, is

stated in the following words: (SCC pp.138-39)

" The decisions of this Court to which our attention was drawn by the learned counsel for the petitioners lay down in no uncertain terms that detention orders can validly be passed against detenus who are in jail, provided the officer passing the order is alive to the fact of the detenus being in custody and there is material on record to justify his conclusion that they would indulge in similar activity if set at liberty. We will not consider the case-law in brief.

In *Vijay Narain Singh* this Court stated that the law of preventive detention being a drastic and hard law must be strictly construed and should not ordinarily be used for clipping the wings of an accused if criminal prosecution would suffice. So also in *Ramesh Yadav v. District Magistrate, Etah* this Court stated that ordinarily a detention order should not be passed merely on the ground that the detenu who was carrying on smuggling activities was likely to be enlarged on bail. In such cases the proper course would be to oppose the bail application and if granted, challenge the order in the higher forum but not circumvent it by passing an order of detention merely to supersede the bail order. In *Suraj Pal Sahu v. State of Maharashtra* the same principle was reiterated. In *Binod Singh v. District Magistrate, Dhanabad* it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. There must be cogent material before the officer passing the detention order for inferring that he 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 officer passing the detention order. Eternal vigilance on the part of the authority charged with the duty of maintaining law and order and public order is the price which the democracy in this country extracts to protect the fundamental freedoms of the citizens. This Court, therefore, emphasised that before passing a detention order in respect of the person who is in jail the concerned authority must satisfy himself and that satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and further if released on bail the material on record reveals that he will indulge in prejudicial activity if not detained."

8. Following the ratio of the aforesaid decision, in our opinion, in the present case, the order of detention is required to be set aside on account of the fact that there has been non-application of mind by the detaining authority who has recited about the possibility of the detenu being enlarged on bail, but there is nothing to indicate that the detaining authority had considered about the possibility of the detenu being released on bail "imminently".

9. Learned counsel for the petitioner has also submitted that at the time when the application for bail was moved, it had been submitted by the Public Prosecutor that the petitioner was likely to be detained under the Act 14 of 1982. However, the materials on record indicate that at that stage, no such proposal had been made by the prosecuting agency or any proposal has been pending before the detaining authority for the detention of the said accused. It is not

understood as to how the Public Prosecutor at that stage could indicate that the person was likely to be detained under the Act.

10. In an unreported decision of this Court in H.C.P.No.232 of 2003 disposed of on 14.10.2003, it was observed as follows :-

" 5. The argument for the petitioner cannot be said to be without substance. It is indeed apparent from the record that the order rejecting the bail has not only been supplied, but has been directly referred to in the grounds. It can easily be called to be a "relied on" document. If that document was considered and from that document the detaining authority came to know that the sponsoring authority had made a confident statement that the detenu was "likely to be detained", even when the sponsoring authority had not sworn to an affidavit and made an application in that behalf, then the detaining authority was bound to take note of, consider and express something about this belief on the part of the sponsoring authority.

6. It is clear from the language of the grounds that the order was a relied upon document. It was specifically put to the detaining authority, read by him and also supplied to the detenu. If that is so, the detaining authority did know about the sponsoring authority's confident belief that a detention order was likely to be passed, which belief he already had on 11.10.2002, even when he had not made any formal proposal for the detention. In that case, the detaining authority was duty bound to take this particular portion into consideration and dispel the doubt by holding that his decision to clamp detention order was made independently of any other thing and only on the materials supplied to him, after the affidavit of the sponsoring authority was filed before him. That is not to be found anywhere in the order. This is, therefore, clearly a case where the detaining authority has failed to take into consideration a very substantial portion of the relied upon document and has not applied his mind. The detention order must go on this count alone."

11. The ratio of the aforesaid decision is also applicable to the facts and circumstances of this case, thus, vitiating the order of detention.

12. For the aforesaid reasons, the preventive order of detention cannot be sustained and is hereby quashed. The detenu is directed to be set at liberty forthwith unless he is required in connection with some other case.